PUBLIC PROSECUTOR v. DATUK HAJI HARUN BIN HAJI IDRIS & ORS.

[O.C.J. (Abdoolcader J.) January 24, 1977]

[Kuala Lumpur — Federal Territory Criminal Trial Nos. 40, 41 and 43 of 1976]

Criminal Law and Procedure — Penal Code — Forgery — Criminal breach of trust — Abetment of criminal breach of trust — Document purporting to be minutes of Investment Committee of Co-operative Society — Document used to secure letters of credit for another company — Property disposed of in violation of direction of law and in violation of legal contract of service — Dishonest intent — Meaning of dishonesty — Penal Code, ss. 23, 24, 107, 405, 415, 463, 464, 468.

Evidence — Minutes of Board meetings of Co-operative Society — Whether evidence can be given to contradict, vary, add to or subtract from minutes — Minutes not exhaustive of proceedings at meetings — Whether matter required by law to be reduced to form of document — Evidence Act, 1950, ss. 91 and 92.

Co-operative Society — Powers of — No authority to pledge — Board of Directors delegating power to committee — No provision for quorum — Acts of committee must be done in presence of all members of committee — Co-operative Societies Ordinance, 1948, ss. 30, 33.

Corporation — Powers of — Prohibition where acts not expressly or impliedly authorised or permitted.

Criminal Law and Procedure — Failure of defence to call any particular witness or witnesses — Whether court can take into account or comment on such failure in viewing whole of the material on which to decide and determine question of reasonable doubt.

Criminal Law and Procedure — Sentence — Conviction for forgery and criminal breach of trust — Principles applicable in sentencing.

In this case the accused were jointly tried on three charges, firstly on a charge preferred against all three of them for jointly committing forgery for the purpose of cheating under section 468 of the Penal Code and secondly on a charge against the second accused for criminal breach of trust under section 406 of the Penal Code and a joint charge against the 1st and 3rd accused under sections 109 and 406 of the Penal Code for abetment of the criminal breach of trust charge against the 2nd accused. It was alleged that the three accused who were at all material times, the Chairman, Managing Director and General Manager/Secretary respectively of the Bank Kerjasama Rakyat Malaysia Berhad, a co-operative society registered under the Co-operative Societies Ordinance, forged the minutes of the Investment Committee of the Bank resolving that (a) three million ordinary shares of Dunlop Estates Berhad and (b) M$1 million debenture stock of Kuala Lumpur Kepong Berhad be lodged with the First National City Bank for the purpose of securing letters of credit for the requirements of Tinju Dunia Sendirian Bhd. for amounts not exceeding M$6.5 million. It was also alleged that the second accused being entrusted with the shares and debenture stock belonging to the Bank Kerjasama Rakyat committed criminal breach of trust thereof and that the first and third accused jointly abetted the commission of the offence. From the evidence it appeared that there were in fact no meetings of the Investment Committee called or convened and that the Bank had no power to pledge its property. There was no substantial dispute regarding the *actus reus* in this case but there was a substantial conflict as to the *mens rea* of the accused.

Held: (1) there was sufficient evidence adduced in this case to prove that the accused made, signed and executed the document purporting to be the minutes of the Investment Committee and that they intended the document to be believed as having been made by or with the authority of the Investment Committee of the Bank;

(2) there was sufficient evidence to show that the accused knew that the document was not made by or with the authority of the Investment Committee and that they acted dishonestly within the meaning of section 24 of the Penal Code;

(3) the document purporting to be the minutes of the Investment Committee was therefore a false document within the meaning of the first limb in section 464 of the Penal Code;

(4) there would appear in this case to be an intent to support a claim or title within the meaning of section 463 of the Penal Code because the document purported to give authority or power to pledge the shares and stock, an intent to cause the Bank to part with its shares and stock and an intent to enter into a contract with the First National City Bank;

(5) there was evidence to show that the document was to be used for the purpose of cheating as without the document the First National City Bank would not have accepted the security offered nor issued the Letters of Credit;

(6) it was proved cumulatively and severally that the second accused had dishonestly used or disposed of the shares and stock in violation of a direction of law prescribing the mode in which the trust is to be discharged and also in violation of a legal contract of service which he had made touching the discharge of that trust;

(7) there was evidence to show that the 1st accused had abetted the 2nd accused within all three limbs of section 107 of the Penal Code, namely abetment by instigation, conspiracy and intentionally aiding and that the 3rd accused had abetted the 2nd accused by conspiracy and intentional aid;

(8) the explanation given by the accused in their defence was not reasonable nor did it cast any reasonable doubt on the case for the prosecution. Having regard to the evidence as a whole, both oral and documentary, the explanation given by the three accused was not only unreasonable but was also inconsistent with their innocence;

(9) in making the document purporting to be the minutes of the Investment Committee and in the subsequent pledging of the stocks and shares the three accused had intentionally caused by unlawful means wrongful loss to the Bank and wrongful gain to Tinju Dunia which was not a subsidiary nor a sub-subsidiary of the Bank. They knew they had no authority to do what they did and in so doing, on the evidence, they committed the offence of forgery under section 468 of the Penal Code, intending the document to be used for the purpose of cheating;

(10) the second accused in pledging the shares and stock committed criminal breach of trust within the definition thereof in section 405 of the Penal Code and the 1st and 3rd accused in signing the document did so conscious of and to achieve its purpose and therefore had actively abetted the 2nd accused in committing criminal breach of trust.

Principles of law enunciated in respect of:

(a) constitution of the offence of criminal breach of trust and forgery;

(b) elements constituting abetment;

(c) application of sections 91 and 92 Evidence Act, 1950;

(d) powers of a corporation as opposed to a natural person;

(e) requirement of quorum for acts of a committee delegated with powers;

(f) powers of co-operative societies;

(g) failure of defence to call any particular witness or witnesses and whether court can take this into account;

(h) determination of reasonable doubt.

Test to determine question of reasonable doubt:

Per Abdoolcader J.: "... in considering the question as to whether a reasonable doubt has been raised, the evidence adduced by and the case for the defence must be viewed in at least some amount of light, not necessarily bright sunlight, but certainly not against the dark shadows of the night."

In this case the learned judge after finding the accused guilty on charges of forgery, criminal breach of trust and abetment of criminal breach of trust sentenced them as follows:—

1st accused — 1st charge 6 months
2nd charge $15,000 or in default 6 months.

2nd accused — 1st charge 2 years
2nd charge $25,000 or in default 9 months.

3rd accused — 1st charge 1 year
2nd charge $15,000 or in default 6 months.

The learned judge took into account the following considerations:—

(i) the sentence must bear relation to the particular circumstances of the offender as well as the particular circumstances of the offence;

(ii) the accused were all first offenders and persons of professional status and their careers would be ruined by the mere fact of conviction;

(iii) the mere fact that the accused have lost their careers is a severe penalty and for men of good character the very fact that prison gates have closed is the main punishment and it does not necessarily follow that they should remain closed for a long time;

(iv) the accused will be subjected to civil litigation and they have incurred costs of considerable magnitude in their defence in a trial of this nature and length;

(v) in the case of the 1st accused, there were certain circumstances which would be no defence to the charges against him but could properly be taken into account in reducing the sentence (applying the decision of the Privy Council in *A.J.E.G. Caspersz* v. *The King*.[20]

Cases referred to:-

(1) *In re Liverpool Household Stores Association (Limited)* (1890) 59 L.J. (N.S.) 616.

(2) *Young* v. *Ladies Imperial Club Limited* [1920] 2 K.B. 523.

(3) *Seet Soon Guan* v. *Public Prosecutor* [1955] M.L.J. 223.

(4) *Dr. Vimla* v. *The Delhi Administration* A.I.R. 1963 S.C. 1572.

(5) *Jaswantrai Manilal Akhaney* v. *State of Bombay* A.I.R. 1956 S.C. 575.

(6) *Mangal Sen* v. *Emperor* A.I.R. 1930 Lahore 57.

(7) *Krishnan Kumar* v. *Union of India* A.I.R. 1959 S.C. 1390.

(8) *Daulat Rai v. Emperor* (1915) 16 Cr. L.J. 473.

(9) *N.N. Burjorjee* v. *Emperor* A.I.R. 1935 Rangoon 453.

(10) *Ragunath Das* v. *Emperor* (1920) 21 Cr. L.J. 213.

(11) *Emperor* v. *Abdul Hamid* (1945) 46 Cr. L.R. 342.

(12) *Faguna Kanta Nath* v. *State of Assam* A.I.R. 1959 S.C. 673.

(13) *National Coal Board* v. *Gamble* [1959] 1 Q.B. 11.

(14) *Ashbury Railway Carriage & Iron Co. Ltd.* v. *Riche* (1875) L.R. 7 H.L. 653.

(15) *Attorney-General* v. *Great Eastern Railway Co.* (1880) 5 A.C. 473, 481.

(16) *Public Textiles Berhad* v. *Lembaga Letrik Negara* [1976] 2 M.L.J. 58, 63.

(17) *Regina* v. *Gallagher* [1974] 1 W.L.R. 1204.

(18) *Public Prosecutor* v. *Lim Kuan Hock* [1967] 2 M.L.J. 114, 115.

(19) *Tay Choo Wah* v. *Public Prosecutor* [1976] 2 M.L.J. 95, 100.

(20) *A.J.E.C. Caspersz* v. *The King* A.I.R. 1949 P.C. 22.

(21) *Mak Sik Kwong* v. *Minister for Home Affairs, Malaysia (No. 2)* [1975] 2 M.L.J. 175, 182.

(22) *Laiq Singh* v. *State of U.P.* A.I.R. 1970 S.C. 658, 659.

(23) *Sargeant* v. *Regina* (1975) 60 Cr. App. 74, 76, 77.

CRIMINAL APPEAL.

Tan Sri Datuk Mohamed Salleh bin Abas, Solicitor-General, *Abu Talib bin Othman*, Deputy Public Prosecutor, and *Datuk Haji Abdullah bin Ngah*, Deputy Public Prosecutor, for the Public Prosecutor.

R.R. Chelliah, Sri Ram, Haji Suhaimi and *P. Vajandran* for the 1st accused.

Edgar Joseph Jr., R. Rajasooria and *Abdul Kadir bin Kassim* for the 2nd accused.

Jag-Jit Singh and *Dulip Singh* for the 3rd accused.

Abdoolcader J.:

1. *Preliminary.*

Bank Kerjasama Rakyat Malaysia Berhad ('the Bank') is a co-operative society registered under the provisions of the Co-operative Societies Ordinance, 1948, primarily to provide financial and other facilities to its members in accordance with co-operative principles, and at all material times Datuk Haji Harun bin Haji Idris (the 1st accused), Datuk Abu Mansor bin Mohamed Basir (the 2nd accused) and Ismail bin Din (the 3rd accused) were respectively its President or Chairman, Managing Director and General Manager/Secretary.

This case involves the joint trial of the three accused firstly on a charge preferred against all three of them for jointly committing forgery for the purpose of cheating under section 468 of the Penal Code, and secondly on a charge against the 2nd accused for criminal breach of trust under section 406 of the Penal Code and a joint charge against the 1st and 3rd accused under sections 109 and 406 of the Penal Code for abetment of the criminal breach of trust charge against the 2nd accused.

The charges read:

1. As against all three accused,

"That you jointly on or about the 5th day of May, 1975 at Bank Kerjasama Rakyat Malaysia Berhad at No. 140 Jalan Ipoh, Kuala Lumpur, in the Federal Territory of Kuala Lumpur forged a certain document, to wit, Minutes of Investment Committee of Bank Kerjasama Rakyat Malaysia Berhad resolving that (a) three million ordinary shares of Dunlop Estates Berhad, and (b) M$1 million Debenture Stocks of Kuala Lumpur Kepong Berhad be lodged at the First National City Bank, Jalan Ampang, Kuala Kumpur for the purpose of securing Letters of Credit requirements of Tinju Dunia Sendirian Berhad for amounts not exceeding M$6.5 million, intending that it shall be used for the purpose of cheating and that you thereby committed an offence punishable under section 468 of the Penal Code."

2. As against the 2nd accused,

"That you on or about the 5th day of May, 1975, at Kuala Lumpur in the Federal Territory, being entrusted with dominion over certain property, to wit, three million ordinary shares of Dunlop Estates Berhad and M$1 million Debenture Stocks of Kuala Lumpur Kepong Berhad belonging to the Bank Kerjasama Rakyat Malaysia Berhad committed criminal breach of trust and that you thereby committed an offence punishable under section 406 of the Penal Code."

3. As against the 1st and 3rd accused,

"That you jointly on or about the 5th day of May, 1975, at Kuala Lumpur in the Federal Territory, abetted the commission of the offence of criminal breach of trust of certain property, to wit, three million ordinary shares of Dunlop Estates Berhad and M$1 million Debenture Stocks of Kuala Lumpur Kepong Berhad belonging to Bank Kerjasama Rakyat Malaysia Berhad by one Datuk Abu Mansor bin Mohd. Basir which offence was committed in consequence of your abetment and that you thereby committed an offence punishable under sections 109 and 406 of the Penal Code."

The supreme authority over the affairs of the Bank vests in its General Meeting specified in By-law 25 of the By-laws of the Bank (P4) but the management of its affairs is entrusted by virtue of By-law 42 to a Board of Directors which includes the Registrar

of Co-operative Societies or his representative and a representative each from the Treasury and the Ministry responsible for co-operative movements, who were perhaps aptly referred to in this trial as the Government watchdogs. The Board is empowered to appoint an Executive Committee of the Board to which specific powers of management may be delegated (By-law 51(i)(25)) and also sub-committees or experts to assist it (By-law 51(i)(10)) in the discharge of its management functions and responsibilities.

The function of the President who is also referred to as the Chairman in the By-laws is to preside at all General and Board meetings and sign the minutes of meetings on confirmation thereof and supervise generally and be responsible for the proper functioning of the Bank (By-law 54). To assist the Board and the President or Chairman in the management of the Bank there are two other officers of importance, namely, the Managing Director and the General Manager (By-laws 55 and 56). There is also provision for the appointment of a Secretary (By-law 57) and at all material times the 3rd accused officiated both as General Manager and Secretary.

Such then is the general executive and administrative set-up of the Bank in relation to the positions assumed by the three accused. I would add that the powers, duties and functions of the Bank and its officers are circumscribed by and exercisable only within the ambit of the Co-operative Societies Ordinance, 1948, the Co-operative Societies Rules, 1949, and the By-laws of the Bank. No statutory provision is necessary for this obvious proposition but perhaps *ex abundanti cautela* By-law 76 specifically prescribes to this effect.

There is abundant evidence to establish, and this is in no way disputed, that the Bank was at all material times and still is the beneficial owner of three million ordinary shares in Dunlop Estates Berhad covered by 3,000 share certificates of 1,000 shares each (P9) and M$1 million Mortgage Debenture Stock of Kuala Lumpur Kepong Berhad covered by 10 certificates of M$100,000 each (P10), which are the subject-matter of the charges in this case. For brevity I shall refer to these as 'the shares and stock'.

This case revolves around and is directly connected with and is in fact the aftermath of the staging of a sporting event which aroused nation-wide interest — the heavyweight boxing championship fight between Muhammad Ali and Joe Bugner on 1st July, 1975, in Kuala Lumpur. Muhammad Ali was of course the main attraction and indeed when during the course of this trial he announced his intention to retire from the boxing arena, I had occasion to bemoan the fact that this had unfortunately come some 18 months too late to render a *non est* the concatenation of events culminating in this lengthy and somewhat protracted trial.

The brief background to this matter is that the Executive Council of the Youth Movement of the United Malays National Organisation, the major ruling political party in the country, at a meeting on 31st March, 1975, after a briefing by two persons, Mike Ong and Bosco, decided in principle to stage the Ali-Bugner fight in Kuala Lumpur subject to the 1st accused who was also then the President of UMNO Youth Malaysia obtaining from the then Prime Minister, Tun Haji Abdul Razak bin Dato Hussein (who has since ascended to a celestial abode), Government approval and backing therefor. The 2nd accused who was the Managing Director of the Bank got involved in this affair at the behest of the 1st accused after he had apparently obtained what is referred to as the green light from Tun Razak. The 2nd accused arranged for negotiations for the fight to be carried out in the United States of America and also arranged for certain preliminary payments for this purpose to be made through United Manufacturers Sendirian Berhad, a subsidiary of the Bank.

A company known as Tinju Dunia Sendirian Berhad was then formed for the purpose of staging the fight and as a result of an urgent requirement for Letters of Credit to be issued on behalf of Tinju Dunia to meet a deadline on 5th May, 1975, the 2nd accused made a request to the First National City Bank of New York in Kuala Lumpur ('FNCB') to issue Letters of Credit on account of Tinju Dunia to the extent of some M$6 million odd on the security of the shares and stock of the Bank which were pledged with FNCB for this purpose. To effect this transaction a document purporting to be the Minutes of the Investment Committee of the Bank dated 5th May, 1975, was made and signed by the three accused setting out a resolution purportedly of that Committee authorising the pledging of the shares and stock for the purpose indicated. This document is the subject-matter of the forgery charge and has been put in as exhibit P12 which would easily qualify for an academy award for court exhibits if there was one on the basis of the renown and publicity it has received. The charges for criminal breach of trust and abetment thereof would appear to be the direct consequence of the pledge so effected.

Before I turn to the case for the prosecution, it would perhaps not be amiss for me to make some general observations, deal with certain preliminary matters and dispose of one or two points which have arisen for consideration in the course of these proceedings.

It would appear from the evidence adduced that as the triumvir of its principal officers, the 1st and 2nd and perhaps to a lesser extent the 3rd accused, in the fashion of Cerberus, the mythological three-headed hound guarding the gates of Hell, virtually guided and controlled the destinies of the Bank and held its fortunes in their hands. The analogy is perhaps not inappropriate in view of the canine element injected into these proceedings, what with references to watchdogs, toothless, barkless, spineless, chained and all, Government or otherwise, and not forgetting the Press hounds.

For the better part of a period of some 59 days in the course of this trial I have sat virtually combining the functions of a pathologist performing an autopsy, a coroner holding an inquest, an inspector in respect of a declared company and a commission of inquiry in relation to the affairs and running of the Bank. The activities and workings of the Bank unfolded to view as a result have disclosed a deplorable, sordid and scandalous state of affairs and a blatant and outrageous

disregard for the Ordinance, Rules and By-laws, with virtual carte blanche to the 1st and 2nd accused as Chairman and Managing Director, not unaided by the apathy and acquiescence of the directors, including the Government watchdogs or official sentinels or whatever and not excluding even the Registrar of Co-operative Societies himself or his representatives, and with even policy and other decisions of the Board and the Executive Committee not infrequently flouted and honoured more by breach than compliance — all suggestive of and presenting a grotesque picture of passive connivance on the part of the directors in all these irregular and indeed unlawful activities and practices which no doubt occasioned lapses of memory, qualifications as to the ability to recollect and reliance on assumptions and presumptions in certain aspects of the testimony of such of them as testified and who were also not beyond putting dubious interpretations on the minutes of meetings and the By-laws which they had probably never previously seriously scrutinised or considered or even perhaps seen, as is evident from the fact that they seemed on occasions to have resiled time and again from the stand previously taken through the various stages in the process of examination, cross-examination and re-examination. There is, for instance, the incredible scandal of the 1972 and 1973-74 annual accounts of the Bank, which were not only not approved by the Registrar of Co-operative Societies as required by law but also then subject to query by him, being allowed to be presented to and passed by the Annual General Meeting with that functionary's representative present and without any protest or complaint registered by him!

When all this surfaced in the course of these proceedings, I immediately thought in relation to this farcical sort of situation of the appropriateness of the words of Gilbert & Sullivan in referring in another context to another body 'which did nothing in particular and did it very well'. In these circumstances the strictures made by the Solicitor General on the directors both elected and appointed are certainly not without justification, and I can only put a charitable gloss on those aspects of their evidence where the activities and practices indulged in reflect on their own inertia by saying, perhaps they loved the truth so well, they used it sparingly. This does not of course necessarily mean that their evidence in all respects is to be disbelieved or looked at askance.

It would also appear that in the course of this trial political undertones and overtones seem to have infiltrated but I must make it abundantly clear that I have only allowed such matter as is strictly and properly relevant to the case and particularly that for the defence. In determining this matter I am not concerned with any of the political matters introduced in evidence except in so far as they are pertinent to or have a bearing upon the case presented before me. I am of course in this trial moved by no considerations other than that of determining whether or not on the evidence adduced and in law the charges preferred are strictly sustainable within the confines of the Penal Code.

It is necessary to refer to certain exhibits which have been put in in the course of these proceedings for identification but have not in fact been proved as they should have been and are accordingly not exhibits in the strict sense and cannot therefore form part of the record in this case, namely, D41 and D43 which were both put in for identification only and which are the audited accounts and annual report of the Bank for the years 1973-74 and 1972 respectively. As these two exhibits have not been proved and properly admitted as such, they must in the ultimate analysis be discounted and I shall accordingly disregard references to them and also all oral testimony as well adduced in relation thereto. I would mention in passing that the Minute Book of United Manufacturers which was put in as an exhibit (D23) at the behest of counsel for the 2nd accused has not been referred to at all throughout the case.

I should also at this stage refer to the submission of counsel for the 2nd accused that no evidence which would in any way contradict, vary, add to or subtract from the minutes of the Board meetings of the Bank is admissible by virtue of the provisions of sections 91 and 92 of the Evidence Act, 1950, notwithstanding profuse examination and cross-examination on the minutes throughout these proceedings. This submission on a point of law should perhaps be considered and disposed of before I come to deal with the evidence and is, as I understand it, premised on the provisions of By-law 50 which prescribes that all matters deliberated or decided upon at a Board and General meeting shall be recorded in a minute book and signed by the Secretary and the Chairman on confirmation of the minutes. Counsel for the 2nd accused argues that this is therefore a matter required by law to be reduced to the form of a document and accordingly comes within the provisions of sections 91 and 92 of the Evidence Act. I cannot accept that contention for two reasons. Firstly, it is clear from the terms of By-law 50 that what should be recorded in the minute book are only all matters deliberated or decided upon, and the minutes cannot therefore be fully exhaustive of everything that transpires at such meetings. And secondly, in the context of the wording in section 92 of the Evidence Act, the clause 'any matter required by law to be reduced to the form of a document' would appear to refer to bilateral instruments and dispositive documents only, such as contracts, grants or other disposition of property which the law requires to be reduced to writing, and not to every and all matters which the law requires to be reduced into a document, as, for instance, the depositions of witnesses which, though required by law to be reduced to the form of a document, would not come within this section and oral evidence is therefore admissible to contradict such depositions.

There is evidence adduced that since 1972 the 1st and 2nd accused have between them without the prior approval of the Board or the Executive Committee and also of the Registrar of Co-operative Societies decided on and implemented the acquisition and formation of subsidiaries, investment of moneys therein and advances of capital thereto in many cases and that these were only subsequently brought to the notice of the Board or the Executive Committee, quite often without any explanation. This state of affairs although not legalising the position might of course affect and have

a bearing upon the intention of the accused, and the defence therefore places considerable reliance on this aspect in regard to the formation of Tinju Dunia, and accordingly this case in effect centres on the position of Tinju Dunia in relation to and its connection with the Bank. I will presently have to deal in some detail with this question of Tinju Dunia in which the 1st accused is Adviser and the 2nd accused is Chairman, Managing or Executive Director and a shareholder, but for now would only observe that the defence while claiming a relationship between Tinju Dunia and the Bank was not able at least in the initial stages of this trial to specify the exact nature of such relationship.

Counsel for the 2nd accused, in seeking to have certain exhibits admitted in the course of cross-examining the Investigating Officer in this case (PW1), said that the defence would attempt to show that Tinju Dunia is a subsidiary of United Manufacturers. In the course of the trial however it became clear that the defence contends that Tinju Dunia is in fact a subsidiary of Rakyat Corporation Sendirian Berhad, another subsidiary of the Bank. But in the course of submissions of no case to answer at the close of the case for the prosecution when I gave leave to counsel for the defence to reply to the submission of the prosecution in connection with the effect of the transactions disclosed in certain exhibits (D24 and D25) relating to the repayment of some M$6 million by the Bank to FNCB through United Manufacturers in October 1975, counsel for the 2nd accused said that this payment only goes to show and emphasise the fact that Tinju Dunia is a subsidiary of the Bank because the Bank was the financial source of Tinju Dunia. It would appear therefore that the defence has had some difficulty in specifically placing Tinju Dunia's domicile within the Bank's group or at least in finding its proper place in the family tree, so to speak, and it will be necessary to examine the evidence to ascertain the true position in this regard.

There appears to be hardly any dispute regarding the *actus reus* in this case but there is a substantial conflict as to the *mens rea* of the accused, and I think I neatly and aptly summarised the case for the defence and the prosecution at the close of submissions of no case to answer at the conclusion of the case for the prosecution when I said that the effect of the submissions seems to be that the defence maintains everything was straight, with the prosecution however contending to the contrary that everything was only just about as straight as the figure 8.

There is abundant evidence that the accused made, signed or executed P12. Indeed the defence concedes that there is no doubt the prosecution has proved this and they do not in fact challenge this aspect. A number of witnesses have identified the signatures of the three accused, and the 1st accused when shown P3 (a copy of P12) by the Investigating Officer (PW1) acknowledged his own signature therein and those of the 2nd and 3rd accused as well. With regard to the criminal breach of trust charge against the 2nd accused, there is ample evidence adduced by the prosecution, and this his counsel concedes, that the 2nd accused was entrusted with the shares and stock and with dominion over them.

2. *Case for the Prosecution.*

I now turn to a consideration of the evidence adduced in the case for the prosecution, dealing with the events as they occur in chronological sequence in this drama of a pugilistic promotion.

The curtain unfolds with the meeting of the UMNO Youth Executive Council on 31st March, 1975, at which the decision I have referred to was made. On this aspect Abdullah Ismail (PW5) testified that Mike Ong in his briefing to the meeting produced facts and figures in support of the estimates he gave and indicated an estimated cost for staging the fight of some M$10-12 million and an estimated profit in the region of a few million dollars. He said that the question of finance was not discussed at that meeting. He went on to say that UMNO Youth did not put up any money for the fight, that he knew, as he had been told by the 1st accused, that the source of finance for Tinju Dunia to stage the fight was the Bank and this was arranged by the 2nd accused, and added that the 1st accused was present at some of the discussions in connection with arranging the finance. He added that UMNO Youth was planning to build a sports complex and hoped to get some profits from the fight to put up this sports complex for which a site had already been chosen.

The next event occurs at the Subang airport the next day when the 1st accused was leaving for Kuwait. At the airport the 1st accused told PW5, the 2nd accused and some other UMNO Youth Executive Council members who were present that he had seen Tun Razak and got the green light from him. The 1st accused was away for three to four weeks and during his absence there were a few discussions about the fight between the 2nd accused and some members of the UMNO Youth Executive Council. As a result of these discussions it was decided to send Mike Ong and a Jack Rennie to the United States to bring about the fight in Kuala Lumpur, and soon after Ismail Kamat (PW12), the Managing Director of United Manufacturers, was also sent by the 2nd accused to the United States to negotiate the staging of the fight. PW12 was given a letter of authority dated 8th April, 1975, (D38) by Dato Mohamed Rahmat, the Deputy President of UMNO Youth Malaysia, as a credential to negotiate contracts in connection with the proposed fight. D38 clearly shows by the terms of its first paragraph that PW12 was sent as an authorised representative of UMNO Youth, and the third paragraph states that for the purposes of negotiations PW12 had authority to confirm any terms of contract with the promoters of Muhammad Ali.

PW12 left for the United States on 17th April and returned on 30th April, 1975, and during that period he signed seven Agreements (P17) pertaining to the fight (six in the United States and the last one pertaining to Joe Bugner in London) on behalf of the 2nd accused and Tinju Dunia although Tinju Dunia had not then been formally incorporated. These Agreements were signed by PW12 after communication with the 2nd accused by telephone and telex for instructions and after obtaining his consent, and monetarily involved substantially heavy commitments including a purse of U.S.$2.3 million for Muhammad

Ali and U.S.$500,000 for Joe Bugner in respect of which there were stipulations for the opening of Letters of Credit which will become material when I deal with the events of May 5, 1975.

The 1st accused on his return from Kuwait was admitted into the General Hospital, Kuala Lumpur, for a check-up and PW5, the 2nd accused, Dato Mohamed Rahmat and some other UMNO Youth Executive Council members went to see him there in connection with the fight. Before that, however, PW12 who was then still in the United States had made an urgent request for the purposes of the negotiations he was involved in for the remittance of a deposit of some U.S. $350,000, intimating that in default there was a danger of losing the bid for the fight in Kuala Lumpur as other countries were also interested to stage the fight. According to PW5, at the hospital the 1st accused asked around for ideas and every one present looked at each other and then the 1st accused told the 2nd accused to find a way of sending this money, saying that probably the Bank's resources could be used for this purpose. PW5 said the 2nd accused in reply stated that this was a possibility which would be considered and in re-examination added that he only assumed and inferred that it was to be considered by the Bank. It would appear that at least at this stage there was no clear idea as to how or where the moneys required as deposit for the purposes of the negotiations were to be obtained. I might perhaps interpose at this point to say that PW12 who is a director of Tinju Dunia said in evidence that the source of finance for Tinju Dunia was from the proceeds of sale of tickets for the fight. This sum of U.S. $350,000 was duly sent to PW12 in the United States by United Manufacturers on the instructions of the 2nd accused.

PW5 stated that at the hospital meeting with the 1st accused many things were decided and one of them was the formation of Tinju Dunia and he, Saidin Tamby and Zakariah Yahaya were to be the representatives of UMNO Youth in Tinju Dunia. He could not recollect any decision on that occasion as to the appointment of representatives of the Bank in Tinju Dunia but he said that Tinju Dunia was formed jointly by UMNO Youth and the Bank and that this joint venture was decided as far as he could recollect at that meeting at the hospital. This now brings me to the matter of the formation and position of Tinju Dunia and its relationship with the Bank.

Tinju Dunia is a private company limited by shares and was incorporated on 3rd May, 1975, with its registered office at 140 Jalan Ipoh, Kuala Lumpur, which are the premises of the present head office of the Bank. The authorised capital of this company is $25,000 divided into 25,000 shares of $1 each, the issued capital is $10,000 and the paid-up capital only $2 being the two subscribers' shares of $1 each. The 2nd accused and PW5 are its subscribing shareholders and initial directors. In early May 1975, three other directors were appointed, namely, PW12, Jalaluddin bin Abdul Jalil (PW29) and Khairuddin bin Haji Musa, all employees of the Bank. Then by a Circular Resolution dated 29th May, 1975, (D26(A1)) two others, Saidin bin Tamby and Zakariah bin Haji Yahaya who are members of UMNO Youth, were appointed additional directors making a total of seven directors in all.

The accused claim that Tinju Dunia is a subsidiary of Rakyat Corporation and therefore a sub-subsidiary of the Bank by virtue of an allotment of 9998 shares in Tinju Dunia to Rakyat Corporation effected by the same Circular Resolution dated 29th May, 1975, (D26(A1)). That Circular Resolution although bearing the names of the five directors as at that date was only signed by three of them; the 2nd accused and PW29 failed to sign it. It would appear from Article 91 of the Articles of Association of Tinju Dunia (P27) that that resolution is invalid in view of the requirement therein for such a resolution to be in writing and signed by all the directors for the time being entitled to receive notice of a meeting of directors in order to be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

In any event there is no contract of allotment, no application for allotment by Rakyat Corporation nor any letter of allotment to it or payment for the shares either. According to PW29 the suggestion for the allotment was made by the 2nd accused who was then the Managing Director of Rakyat Corporation, and PW12 corroborates him on this. PW12 and PW29 both said that the 9998 shares allotted were not taken up by Rakyat Corporation and therefore only the two subscribers' shares were in fact issued. PW29 said there was positively no application for the shares by Rakyat Corporation and no correspondence between the two companies regarding the allotment and he had no knowledge if Rakyat Corporation was informed of the allotment. This was echoed by Nik Mohd. Dziauddin (PW23), the Secretary of Tinju Dunia, who said that he was not aware of any application for the shares by Rakyat Corporation, and that these shares had not in fact been taken up until the time he resigned as Secretary of the company in March, 1976.

Raja Adnan bin Raja Abdullah (PW17) who was then the Chairman of Rakyat Corporation was not aware of any application by Rakyat Corporation or of any allotment to it of the shares in question in Tinju Dunia. He testified that as Chairman he would have known if Rakyat Corporation had applied or paid for the shares. He said that as far as he could remember this question of application for shares in Tinju Dunia was never raised at any time by Rakyat Corporation, that the sole authority in that company to purchase equity in another company was its Board of Directors and that this power had not been delegated to the 2nd accused or any director or officer of Rakyat Corporation. In these circumstances, it would appear that the 2nd accused had no authority to act in the matter of the allotment on behalf of Rakyat Corporation and the form of Return of Allotment (D53) lodged with the Registrar of Companies under section 54(1) of the Companies Act, 1965, which is no more than a formal notification required by law, can have no effect in substantiating or validating an otherwise ineffectual transaction.

I have already referred to the evidence of PW5 on the question of UMNO Youth hoping to get profits from the fight to put up a sports complex. All payments for and on behalf of Tinju Dunia were in fact

made through United Manufacturers and not Rakyat Corporation. PW12's expenses for his trip to the United States and London and also Mike Ong's and Jack Rennie's travelling expenses were also paid by United Manufacturers. I have already touched on the remittance of U.S. $350,000 to PW12 in the United States, and after his return four further sums totalling some U.S. $400,000 due under the Agreements (P17) were also paid by or through United Manufacturers, and these four sums were transferred into Tinju Dunia's bank account on the authority and instructions of the 2nd accused. All this is clear from the evidence of PW12 who said that as Managing Director of United Manufacturers he questioned the 2nd accused who was the Chairman of that company as to why all these payments were made from United Manufacturers to which the 2nd accused replied "Just pay it first and then we will resolve the matter later." He said he was instructed by the 2nd accused to make the payments which were charged to Tinju Dunia's Debtor's Account opened with United Manufacturers.

There is then evidence of a repayment of some M$6 million to FNCB sometime in October 1975, made by way of two payment vouchers, a debit note and a debit advice contained in the accounting records of United Manufacturers relating to Tinju Dunia (D24) and the accounting records of the Bank (D25) which show that first United Manufacturers received the money from the Bank on 11th October, 1975, then on 15th October the United Asian Bank paid the money to FNCB and on 21st October on receipt of a debit advice dated 15th October United Manufacturers paid the United Asian Bank M$6 million and later on 27th November debited Tinju Dunia whose paid-up capital was then only $2 with M$6 million. That this was a highly devious and circuitous method of repayment is self-apparent even if Tinju Dunia were a subsidiary of United Manufacturers, and how much more so then if, as the defence contends, it is indeed a subsidiary of Rakyat Corporation. And if the whole affair was truly impeccable and guileless, why could the Bank not make a direct repayment to FNCB and be done with it?

The whole position becomes confounded and even more complicated on a scrutiny of the Statement of Assets and Liabilities of Tinju Dunia as at 31st December, 1975, (D26C(1)) which was prepared by PW29 and signed and certified by him as correct and a copy given to the 2nd accused. In that statement under Liabilities there are items relating to 'Advances payable (United Manufacturers)' in the sum of $8 million odd and also to a bank loan from FNCB in the sum of $147,000 odd and a bank loan from the Bank for some $318,000 odd, and then under Sundry Creditors the Bank again appears as a creditor in the sum of some $2,500 odd. It therefore appears that moneys had in fact been paid to and on behalf of Tinju Dunia not only through United Manufacturers but also directly by the Bank.

There is evidence of denials by the 2nd accused at the Board meetings of the Bank on 29th August and 5th November, 1975, regarding the Bank's involvement with Tinju Dunia which I shall deal with presently and the fact that neither the Board nor the Executive Committee were ever informed of the formation of Tinju Dunia or its connection with the Bank at the Board meetings I have referred to, nor was the Executive Committee meeting on 27th November, 1975, when Tun Razak's complaints regarding the Bank's activities were discussed, and neither was the Annual General Meeting of the Bank which was held on 6th September, 1975.

PW23, the Secretary of Tinju Dunia, said that Tinju Dunia is not a subsidiary of any company to his knowledge and up to the time he resigned in March 1976, no other shares were issued in Tinju Dunia apart from the two subscribers' shares. The matter of the formation of Tinju Dunia and the application of the Bank's moneys therein were never referred to the Registrar of Co-operative Societies nor was his approval obtained. This was stated by Dato Abdul Aziz bin Hussain (PW21), the Registrar-General of Co-operative Societies, and Abdul Aziz bin Ibrahim (PW27), the Acting Deputy Director-General of the Co-operative Department. PW29 said that at meetings called for by the 2nd accused of officers of the Bank and Rakyat Corporation in connection with Tinju Dunia, the 2nd accused did not mention the involvement of the Bank in Tinju Dunia but only of the staff of the Bank and Rakyat Corporation.

With regard to the employees of the Bank and Rakyat Corporation working in the Tinju Dunia Secretariat at the Holiday Inn and generally in connection with the fight, this was done, according to the evidence, on the instructions of 2nd accused, a reasonable inference being that this was motivated by reasons of convenience and expedience, and the fact that he instructed his subordinate officers to so work and to serve on the Board of Tinju Dunia does not necessarily mean that these officers were officially representing the Bank, in view of the absence of any sanction or even subsequent ratification by the Board of the Bank for the formation of Tinju Dunia or the Bank's participation therein or the appointment of the Bank's employees as its directors. And it does not necessarily follow that the Bank's employees in working for Tinju Dunia were doing work for the Bank because the 2nd accused apparently instructed them to this effect on his own authority and without that of the Board of the Bank.

The three employees of the Bank other than the 2nd accused on the Board of Tinju Dunia were appointed directors by the 2nd accused. PW29 said this and added that there was no specific capacity in which he had been named a director of Tinju Dunia. And it does not therefore necessarily follow that they were appointed in fact by virtue of their employment to represent the Bank, and it is significant that although PW29 has since resigned from the Bank on 1st July, 1976, he still remains a director of Tinju Dunia and has not been removed as such. The fact that the 2nd accused, PW12 and PW29, all employees of the Bank, were, as directors of Tinju Dunia, the authorised signatories for operating the bank account of that company is neither here nor there, as they were not doing so in respect of cheques drawn on the bank account of the Bank or any of its subsidiaries, and is perhaps also understandable on the basis of convenience

as the other two would be easily accessible and available to the 2nd accused for that purpose. PW29 moreover on his evidence would appear to still continue as an authorised signatory despite his resignation from the Bank. No elected or appointed director of the Bank was appointed to the Board of Tinju Dunia.

There is evidence by PW29 that Rakyat Corporation has rendered certain services to Tinju Dunia in connection with the fight and has billed Tinju Dunia for over $40,000 for the work done and he added that Rakyat Corporation expected payment in cash for the amount due.

The pledging of the shares and stock was effected on 5th May, 1975, but the purported allotment of shares to Rakyat Corporation in Tinju Dunia was made by the Circular Resolution (D26(A1)) some 24 days later on 29th May.

Another matter of some relevance and significance appears in the general ledger of Tinju Dunia (D26(B)), and in particular in the entries made therein in respect of the issued and paid-up capital of Tinju Dunia (D26(B1)). PW29 testified that the entries in question were made under his supervision and that he is in charge of the general administration of Tinju Dunia which includes the accounts. In D26(B1) there is an entry dated 25th April, 1975, of $2 as the issued and paid-up capital of Tinju Dunia. On the same day there is an entry of $9,998 as issued and paid-up capital. Both entries purportedly refer to cash payments and there is no indication of the identity of the payor of the sum of $9,998, which is significant, as the $2 would obviously refer to the two subscribers' shares held by the 2nd accused and PW5. Then on 27th January, 1976, the second entry of $9,998 made on 25th April, 1975, was reversed, leaving a total issued and paid-up capital of only $2. This witness stated in re-examination that the reversal entry was made on the instructions of the directors of Tinju Dunia including the 2nd accused.

Another aspect in relation to these ledger entries is that although the company was incorporated on 3rd May, 1975, and the allotment of shares to Rakyat Corporation was purportedly effected on 29th May, 1975, the entry in respect of $9,998 in the ledger was made on 25th April, 1975. PW29 said in evidence that the entries pertaining to the $2 and $9,998 were based on the subscribers' shares and the Circular Resolution (D26(A1)). But considering the relevant dates of the entries and the allotment, it would appear that the allotment was only made subsequently to regularise *ex post facto* the initial entry in respect of the $9,998, without any thought perhaps on 25th April, 1975, when the entry was made as to who the allottee would be.

In the light of all this evidence and the representations to FNCB as to how Tinju Dunia expected to discharge the credit facilities granted which I shall advert to a little later, I am constrained to conclude, in language veiled in allegory, that Tinju Dunia, which apparently was conceived at the General Hospital in Kuala Lumpur, developed as a floating foetus bereft of any umbilical cord and was delivered by design as an orphan of undetermined lineage and uncertain heritage, maturing into a waif of no fixed abode and destined to be shuttled *ex post facto* into such parentage as the whims and fancies of its progenitors would dictate in the wake of shifting circumstances — certainly not a picture of a veritable midwife's delight as she would not know from whom to collect her fees. On the basis of the several aspects of this matter I have adumbrated, it can hardly be said that Tinju Dunia is a subsidiary of the Bank or United Manufacturers or Rakyat Corporation as the defence contends. The moral of all this is that the legitimate offspring of normal nativity does not have to look at his birth certificate to discover who his father is.

There is then evidence by PW12 of the receipt of a telex through the United Manufacturers' telex machine on 2nd May, 1975. This telex message (D29) which was received by him and passed to the 2nd accused was from Don King, apparently a boxing promoter in the United States connected with Muhammad Ali, and it intimated that the fight would be called off if the Letters of Credit and the cash due were not sent immediately. It was this message which precipitated the events on 5th May, 1975, and the making of P12. On this the pertinent evidence is that of Richard Kent Bird (PW13) who was then the resident Vice-President of FNCB and Jeannie Lim (PW14), at the relevant time the Senior Assistant Manager in charge of the Personal Banking Group in FNCB.

Briefly, PW13 said that on 2nd or perhaps 3rd May, the 2nd accused telephoned him to enquire if FNCB would be prepared to open Letters of Credit payable to the promoters of the Ali-Bugner fight and on his enquiring what security would be available, the 2nd accused replied that he would provide shares in Dunlop Estates valued slightly in excess of the amount of the Letters of Credit. As a result of that conversation PW13 dictated a memorandum (P8) to PW14. It is significant that P8 which is headed "Re: Tinju Dunia Sendirian Berhad" states in its body that "Apparently the company does not have any paid in capital yet as the local promoters will be raising the funds over the next 3 weeks" and goes on to state that "Presumably the cash being raised by the promoters will be deposited in Tinju Dunia's account and can then be set up as a 100% margin account on the LCs and the shares released at that time." P8 was passed to PW14 on 3rd May by PW13's secretary.

Now comes that fateful day, the 5th of May. On the evidence of PW29, Ghazirah binti Mohamed Ghazali (PW26) and Abu Saffian bin Mohamed Tamin (PW30), the 2nd accused dictated exhibits P11, P12 and P13 that morning and handed these duly signed together with 11 blank transfer forms (P16) also duly signed to PW29 who then took them to the FNCB together with the certificates in respect of the shares and stock (P9 and P10), three applications for Letters of Credit (P30) and a Continuing Commercial Credit Agreement (P31), accompanied by PW30 and one Ahmad Khalid, and handed all these to PW14. PW14 had arranged to enlist the help of Bobby Lee Kok Chan (PW6), then the officer in charge of the Import and Export Department of FNCB for the purposes of opening the Letters of Credit and he was at that time present. The Letters of Credit proper (copies of which are P32) were prepared on 6th May, 1975, but PW6

on instructions from PW29 that the Letters of Credit must be notified to the beneficiaries that very day *i.e.* 5th May, as it was very urgent, sent cables notifying the beneficiaries accordingly. One of the Letters of Credit was subsequently amended as a result of PW6 receiving a letter from Tinju Dunia dated 16th June, 1975, (P33) and Muhammad Ali was informed of this by cable. Payment has been effected to all the three beneficiaries under the three Letters of Credit as is evident from the drafts drawn by the beneficiaries and the debit advice notes from FNCB, New York (P34, P35 and P36).

According to PW13 and PW14, the Credit Committee of FNCB consisting of both of them and one Chong Mun Kei by initialling P11 approved the credit facilities asked for by Tinju Dunia in the three applications for Letters of Credit (P30) on the basis of the security lodged. There are two other documents connected with this transaction which were handed by PW14 to PW29 for execution — a General Letter of Hypothecation by Tinju Dunia (P14) and a Power of Attorney from the Bank (P15) in respect of the disposal of the Bank's three million ordinary shares in Dunlop Estates Berhad which was necessary because one blank transfer form (P16(1)) covered all these three million shares.

P11 is a letter under the Bank's letter-head dated 5th May, 1975, signed by the 2nd accused as Managing Director of the Bank and addressed to the Manager, FNCB under the heading "Tinju Dunia Sdn. Bhd.", and refers to the lodgment of the shares and stock to secure the facilities required and to an attached copy of the Minute (sic) of the Investment Committee of the Bank authorising the Bank to lodge these securities in respect of Tinju Dunia's account. The annexure is P12. P13 is a letter of the same date from Tinju Dunia signed by its authorised signatories, the 2nd accused and PW29, and addressed to the Manager, FNCB under the heading "Tinju Dunia Sdn. Bhd.'s a/c", referring to the 2nd accused's telephone conversation with PW13 on Saturday 3rd May with regard to the issue of Letters of Credit on account of Tinju Dunia, and stating that as agreed the shares and stock were thereby forwarded as collateral and adding that the total market value of the shares and stock was about $6.5 million.

It now becomes necessary to consider P12 which I have briefly referred to in stating the background to this case. It is a document typed on the Bank's letter-head and dated 5th May, 1975, under the heading "Minutes of Investment Committee of Bank Kerjasama Rakyat (M) Berhad", setting out a resolution for the shares and stock to be lodged at FNCB "for the purposes of securing Letters of Credit requirements of Tinju Dunia for amounts not exceeding M$6.5 million" and for the said securities to be placed as collateral for a period not exceeding three months from the date thereof. The signatures of the three accused appear at the bottom of the resolution above their respective designations of Chairman, Managing Director and Secretary. The certificates in respect of the shares and stock (P9 and P10) were received and have since been kept in the custody of FNCB as is evident from P20B and P40 until PW1 took possession of them for the purposes of this case.

It is clear from the evidence of PW13 and PW14 that the three documents P11, P12 and P13 were all necessary and important and that P12 was important because the shares and stock are registered in the name of the Bank, and without these three documents and the shares and stock the FNCB would not have opened the Letters of Credit on 5th May. PW14 designated P12, P11 and P13 in that order of importance and said that if Tinju Dunia had applied for the Letters of Credit without the support of the Bank, FNCB would not have granted the credit facilities requested. PW13 said that if he had any doubts about the contents of P12 he and indeed the other members of the Credit Committee of FNCB as well would not have considered the applications for the Letters of Credit. PW13 also said he did not check on the accuracy of the contents of P12 because it was signed by the Chairman, Managing Director and Secretary, and he was satisfied with that, and neither did PW14 check on the veracity of its contents because, as she said, she accepted it in good faith. Both PW13 and PW14 said they would absolutely not have considered the applications for Letters of Credit without P12.

It is accordingly abundantly clear that the whole transaction on 5th May centred on P12 which was of absolutely vital importance and crucial for the purposes of obtaining the credit facilities required by Tinju Dunia. I might add that PW13 said that the agreed date for the repayment of the loan was August 30 but was later extended to 15th November, 1975, and PW14 said that the 2nd accused had told her at a party before 5th May that the moneys for repayment of the loan to FNCB would be coming in from local gate collections from the fight and overseas collections from television and cinema rights and that PW29 confirmed this to her after that date.

Before I deal with P12 as such, in view of the reference in it to the Investment Committee of the Bank, it will be necessary to refer to the Minutes of the Board meetings on 14th January, 1972, and 26th March, 1975, (appearing in P7) at which an Investment Committee and an Investment and Loan Committee were respectively constituted. At the Board meeting on 14th January, 1972, under Agenda 9.4 in the Minutes, the Board agreed to appoint an Investment Committee with powers to make immediate decisions relating to investment up to a maximum of $200,000 and the members appointed to that Committee were the Chairman or Vice-Chairman, the Managing Director, the Registrar, Yuhyi bin Mohamed Ismail (PW28), the Treasury representative on the Board and Mustaffa bin Yunus (PW16).

As to the Board meeting on 26th March, 1975, Agenda 12.1 and 12.2 in the Minutes relate to a consideration of applications for loans by three persons for substantial sums and under Agenda 12.3 which is headed "Power to approve loans", the Board agreed and decided, in view of the large number of applications for loans exceeding $100,000 which required urgent consideration and approval and which could not wait for submission to a meeting of the Board of Directors or the Executive Committee, that such applications be referred for the consideration of an Investment and Loan Committee consisting of the President,

Vice-President, the Managing Director, the Registrar of Co-operative Societies and the representative of the Treasury. This decision of the Board on 26th March, 1975, would appear to implement the necessity, in view of the frequency and urgency of such applications, to alter and revise the third and fourth heads of the decision of the Executive Committee on 14th August, 1974, (Agenda 5.1 in its Minutes in D22) with regard to the power to approve loans to members and perhaps also that of the Executive Committee on 10th September, 1974, (Agenda 2.4 in its Minutes in D22) in relation to loans to directors.

There is considerable argument as to the validity of P12, as to which Committee in fact resolved to effect the pledging of the shares and stock, as to whether there was a valid meeting of that Committee with the proper quorum and also whether it was within its powers to so resolve, and generally whether there is in fact any power in the Bank to make the pledge effected by P12. It would appear to me that I am not concerned so much with the validity or otherwise of the transaction as I would be in civil litigation for a declaration to that effect as with the propriety thereof. As the determinant factor in this trial is the intention of the accused, what really matters is not what was actually done but rather how it was done.

There is abundant evidence that there has in fact been no meetings called or convened either of the Investment Committee of 1972 or the Investment and Loan Committee of 1975. PW16 was a member of the 1972 Committee but ceased to be a director of the Bank in 1973, and it is contended by the defence that the 1972 Committee should have been re-constituted or re-confirmed after the Annual General Meeting in 1972 and that as this was never done it is defunct and non-existent. The defence contends that P12 is a resolution of the Investment and Loan Committee of 1975 and that this Committee has the power to make investments as well as grant loans exceeding $100,000 although this is not so stated in the Minutes, and that any two members of that Committee can form a quorum. I would have thought that the question of a quorum necessary for a meeting only arises when there is in fact a meeting properly called and, as I have said, the essence of the matter is not the validity of any such meeting but whether or not there was in fact a meeting of the relevant Committee as such and the propriety of the circumstances in which the resolution in P12 came about for the purposes of considering the *mens rea* necessary to establish the charges in this case.

It is clear from the evidence adduced that there have never been any notices calling for meetings of the 1972 or 1975 Committees, and apart from the 1st and 2nd accused, none of the members of those Committees have ever received any such notices or attended any meetings of either of those two Committees. I have already adverted to the question of the necessary quorum and would only observe that if *ex necessitate* it became necessary for only two members to meet as that Committee, whichever one it was, there should at least have been some steps taken immediately or as soon as possible thereafter to inform the other members of that Committee and the Board or the Executive Committee and the Registrar of Co-operative Societies of what had taken place and to seek ratification of any action taken by such two members. If any two persons out of a committee of five can *suo motu* and unilaterally meet as that committee without taking any prior or subsequent steps to inform the other members of that committee of what they intend to do or have done, then this must necessarily in my view reflect on their state of mind and intention. If any two can so meet to the exclusion of the others on a committee they could then act and arrive at decisions to the detriment of that committee or its other members.

In any event, quite apart from the evidence of the directors of the Bank who testified that the quorum for the 1972 or 1975 Committee would be a majority of its members based on the practice of the Executive Committee, it has been held that where a board of directors delegate its powers to a committee without any provision as to the committee acting by a quorum, all acts of the committee must be done in the presence of all the members of the committee (*In re Liverpool Household Stores Association (Limited)*[1]). In *Young* v. *Ladies' Imperial Club, Limited*,[2] the Court of Appeal in England held that where a special meeting of a committee or any other body has to be specially convened for a particular purpose, every member of that body ought to have notice of and a summons to the meeting, and accordingly the omission to summon one member of a committee and the fact that the notice did not state the object of the meeting with sufficient particularity vitiated the proceedings of that body. If therefore there was a meeting of the 1972 or 1975 Committee for the purposes of P12 between the 1st and 2nd accused only, there was no proper quorum for a valid meeting, and this reinforces the importance of subsequent ratification I have adverted to.

The next point that arises for consideration is whether or not the Bank has power to pledge. If it has none then neither has any of the two Committees of 1972 and 1975. I can see no power provided for this in the Ordinance, Rules and By-laws of the Bank but in the absence of any such power or in the event of any doubts about its existence, then obviously it is the Board or the General Meeting of the Bank which must deliberate and decide on an important issue such as this and not any of the two Committees in question, and that too with the prior approval or at the worst if absolutely necessary in exceptional circumstances the subsequent ratification of, or at least in any event some form of reference to, the Registrar of Co-operative Societies.

If P12 is a resolution of the 1972 Committee then it is certainly outside the powers of that Committee which is restricted to investments not exceeding $200,000 and this also raises the further question whether the pledge effected is an investment. If P12 is a resolution of the 1975 Committee there again it will be outside its powers as it would seem clear to me from the wording of the Minutes I have referred to that it was established only to consider applications for loans exceeding $100,000. The heading in the relevant Minutes with regard to the 1975 Committee is, I repeat, "Power to approve loans". PW28 who

is a member of the Investment and Loan Committee of 1975 said that when this Committee was set up he could not recollect the question of investment being discussed. The loans referred to in the Minutes of that Board meeting, according to PW17, PW21 and PW28, all members of that Committee, were only to members of the Bank and PW21 said this is clearly so because loans can only be given to members of a co-operative society in view of the provisions of section 30(1) of the Ordinance as it then and at all material times stood until its amendment which was effective only on 27th February, 1976.

Again, it would appear to me that the pledging effected by P12 is neither a loan nor an investment and, in any event, the matter was not at any time decided or ratified by the Board or approved by or referred to the Registrar. And even if the pledging can be said to be an investment, section 33(e) of the Ordinance requires the approval of the Registrar, and according to PW27, the approval must be that of the Registrar personally and in writing and must be preceded by an application therefor also in writing.

According to the evidence of the directors, Mohamed Yob bin Busu (PW15) who was the Registrar of Co-operative Societies until early January, 1975, and PW28, the Board has never delegated any power to any of the accused to resolve as in P12 and to pledge the assets of the Bank. Counsel for the 2nd accused submits that on the authority of By-law 55 the 2nd accused could himself acting alone exercise the powers of the Board and pass a resolution as in P12. I can see no merit whatsoever in that contention as the By-law in question simply empowers the Board to appoint a Managing Director and does not give any powers to the Managing Director as such. The source of the powers of the 2nd accused as Managing Director is not to be found in By-law 55 but in any conferment upon or delegation to him made by the Board. All this however appears to be irrelevant and academic as P12 clearly purports to be a resolution of the Investment Committee and not a unilateral act of the 2nd accused acting as Managing Director of the Bank and the pledging of the shares and stock was effected by virtue thereof. I would merely observe that if the 2nd accused as Managing Director purported to make the decision to effect the pledging of the shares and stock then he would be clearly acting under a mistake of law which is no defence to the charges against him.

It would therefore appear to me that the 1st and 2nd accused in purporting as members of the Investment Committee of the Bank (whichever one it was) to resolve as in P12 acted unilaterally and without authority, and if there was a meeting between them it was not a meeting of the 1972 Investment Committee or the 1975 Investment and Loan Committee or any other authorised body of the Bank but only a meeting of the two of them in their personal capacities although they purport to be described in P12 as the Chairman and Managing Director and the 3rd accused as Secretary. The three accused when signing P12 cannot have been unaware of the position in relation to the 1972 and 1975 Committees and all the other circumstances I have discussed.

I must also draw attention to the fact that the heading in P12 refers to Minutes whereas the body purports to be the resolution itself, and the Minutes referred to in that resolution are those of the Investment Committee of the Bank whereas the defence seems to contend that the Committee in question is the Investment and Loan Committee of 1975. It is also of some significance that the covering letter P11 from the Bank signed by the 2nd accused is headed "Tinju Dunia Sdn. Bhd." and this would of course require the necessity of finding a connecting link between the Bank and Tinju Dunia for the purposes of the transaction in question. The pledging of the shares and stock effected by virtue and as a result of P12 was never made known at any time to the Board or the Executive Committee of the Bank or anyone else for that matter and was only disclosed after and perhaps as a result of the arrest of the 1st and 3rd accused on 12th March, 1976.

I accordingly hold that the resolution purportedly made in P12 was *ultra vires* the Bank and beyond the scope and authority of the 1972 and 1975 Committees and of each of the three accused and a unilateral and unauthorised act on the part of all the three of them.

It might be convenient to observe at this stage that as a result of what I have just said the Power of Attorney (P15) executed by the 2nd and 3rd accused on behalf of the Bank would appear to contain false representations in the second and third recitals and the testimonium clause in so far as they relate and refer to the request and agreement of the Bank and its causing the execution of that document as stated therein, and they must in the circumstances have known this was so but signed it notwithstanding. According to PW14 this Power of Attorney is a very important document for FNCB, in view of the amount of the Dunlop Estates shares involved, for the purposes of a sale in the stock market should the need arise to recover the credit facilities extended to Tinju Dunia in the event of non-repayment.

The reference in P8 to the local promoters raising funds over the next three weeks would appear to amount to a representation by the 2nd accused to PW13 that the funds to be raised by Tinju Dunia would not in fact come from the Bank and it must have been in the contemplation of the 2nd accused that the capital required by Tinju Dunia would and could be raised in the span of some 3 weeks thereafter. The period of three months mentioned in the last paragraph of P12 and the evidence of PW14 I have referred to as to the 2nd accused and PW29 expecting to make repayment of the loan from local gate and overseas collections would appear to confirm this and suggest that if in fact this had materialised within the period for the credit facilities asked for and granted by FNCB, the use of the shares and stock of the Bank as security would not perhaps have come to light.

I now proceed to exhibit P18 which comprises four articles in four issues of the *Sunday Mail* and *Malay Mail* written by Francis Xavier Emmanuel (PW4), a reporter and sub-editor of the *Malay Mail* in charge of sports. In none of these reports relating to the fight is there any mention of the Bank. The

most important one appears to be P18(1) which is the *Sunday Mail* of 18th May, 1975, under the heading "Ali-Bugner fight to cost $12 million" and which attributes to the 1st accused the statement that UMNO Youth had deposited about $10 million in banks in London and the United States as guarantee for the fight, that the money was sent by bank draft a few days previously and that UMNO Youth was the sole sponsor of the fight and Tinju Dunia was only the local promoter.

PW4 gave evidence that all this was told to him by the 1st accused at an interview he had with him on 17th May after the news of Muhammad Ali defeating Ron Lyle at Las Vegas. He was unshaken in cross-examination and clearly stated that the statements referred to were in fact made by the 1st accused and that he had taken down notes of his answers which had however since been destroyed as a matter of procedure. He said that the part of the report in quotations were exact quotations word for word, and that in his own words was what the 1st accused had said to him and he put it in the third person in the report. He also said there has been no denial or request for correction of this report from the 1st accused. There is no reason for me not to accept his evidence and if true this article amounts not only to a non-disclosure but also rather an attempt to give unwarranted credit to UMNO Youth and conceal the use of the Bank's property as security for the required monetary commitments for the fight.

On 2nd June, 1975, the Teluk Anson Branch of the Bank was inaugurated and at a ceremony on that occasion the 1st accused as Chairman of the Bank made a speech. Mohamed Radzi alias Ramli bin Haji Kasa (PW19), a director of the Bank who was present, testified that in the course of his speech the 1st accused said that the Bank apart from other activities was also bringing the fight between Joe Bugner and Muhammad Ali to Kuala Lumpur. He was the only witness who testified to this effect and he said this in the course of cross-examination. But this witness also testified that he knew Tinju Dunia was involved in the Ali-Bugner fight before this ceremony in Teluk Anson on 2nd June, and agreed in re-examination that this knowledge and what the 1st accused said on that occasion were in conflict. Another director present, Haji Ali bin Haji Ismail (PW18), said he could not remember if the 1st accused mentioned the fight, and PW21 and PW28 said they did not hear such a statement. PW21 said that he would have heard it if it had been mentioned. It is surprising that none of the other directors heard or could recollect this particular observation of the 1st accused on that occasion except PW19. I am not taking into account the evidence of PW18 as for reasons which I shall state presently I will have to disregard the whole of his evidence.

I now turn to an article in the *New Straits Times* issue of 25th June, 1975, (D21) under the heading "I'll go on serving Malaysia, says Harun" in which it is reported that the 1st accused denied an allegation that he initiated the Ali-Bugner fight for political reasons, and stated that the misunderstanding regarding the purpose of staging the fight in Kuala Lumpur could be because UMNO Youth was well represented in the Bank, that Tinju Dunia, the promoter of the fight, was a subsidiary of the Bank, the source of finance for the fight which was sponsored by UMNO Youth, and that he had formed Tinju Dunia after getting Tun Razak's blessings. The tenor of this report would appear to suggest that it was prompted by a question put to the 1st accused as to whether or not there were political reasons for staging the fight and he denied this and then made the statements appearing in the report. The report has a political context and should be read as a whole but, be that as it may, it does state that Tinju Dunia is a subsidiary of the Bank which was the source of finance for the fight sponsored by UMNO Youth.

Even if it is accepted that the 1st accused mentioned the Bank bringing the fight to Kuala Lumpur at Teluk Anson on 2nd June and made the statements appearing in D21, this was done some four and seven weeks respectively after 5th May and, in any event, any such disclosure made regarding the Bank's involvement with Tinju Dunia was made at the wrong time and at the wrong place and perhaps even to the wrong audience. Any such disclosure should have been made very much earlier to the Board or the Executive Committee of the Bank or to the 1972 Investment Committee or the 1975 Investment and Loan Committee, whichever it was, and to the Registrar of Co-operative Societies. This was not done. Further, the method of utilisation of the Bank's assets was never revealed and the question for my consideration and determination in this case is whether or not such utilisation was in fact made by lawful means which is pertinent for the purposes of the provisions of sections 23 and 24 of the Penal Code. Therefore even if I accept the evidence of PW19 as to what the 1st accused said on 2nd June which I do not, and the report appearing on 25th June in D21, such disclosure as there might have been, like a bikini, was perhaps important only for what it in fact concealed in that it did not reveal resort to the Bank's resources and facilities in the proper forum at the proper time to an authorised body actually concerned, or the *modus operandi* for such recourse.

There are two letters dated respectively 6th and 7th June, 1975, (D51 and D52) from the Secretary-General of the Treasury referring to discussions between the 2nd accused and the Minister of Finance and Treasury officials regarding tax exemption on the earnings of Muhammad Ali and Joe Bugner and intimating agreement by the Government to grant such exemption only in the event of a loss arising from the sponsorship of the fight by Tinju Dunia. These two letters are addressed to the Managing Director of Tinju Dunia, and the references to the 2nd accused in the body are to him by name in relation to his position in Tinju Dunia.

The Ali-Bugner fight took place as scheduled in Kuala Lumpur on 1st July, 1975. PW19 who received an invitation to the fight said in evidence that the invitation card was from UMNO Youth and there was no mention of the Bank in it.

There was a Board meeting of the Bank on 29th August, 1975. PW17 said that at this meeting

one of the directors, Haji Bahari bin Haji Hassan, raised the question of Tinju Dunia and that as far as he could remember that was the name of the director who raised the query but then added that he was not sure if it was Haji Bahari who raised the query. He said that the 2nd accused replied to the query raised and, as far as he could remember, the 2nd accused said that the financing of Tinju Dunia had nothing to do with the Bank and Tinju Dunia was financed by an American bank, and he also mentioned FNCB. He said that the 1st and 3rd accused were present when this took place and he also thought this query was raised as a general question at the beginning of the meeting. In re-examination he said Haji Bahari was seated in front of him and he certainly saw him raising the question while seated, and added that he was certain of the answer given by the 2nd accused. There is some evidence on this by PW18 but I must discount and wholly disregard all his evidence in view of a material discrepancy in his evidence and his statement to the police (D44).

PW19 said that Haji Bahari raised the question about the financing of the fight at that meeting but he could not remember at which stage of the meeting this was done, and that the 2nd accused replied stating that Tinju Dunia had no connection with the Bank. He said that from what he had read in the newspapers it looked as though Tinju Dunia belonged to the Bank and so he prompted Haji Bahari to ask the question. He said the 3rd accused was present then. He added that he was quite sure that Haji Bahari raised the question in the course of that meeting. He further said that after the question was raised and the reply given by the 2nd accused he had a conversation with Haji Bahari in respect of Tinju Dunia and they both felt satisfied with the reply given by the 2nd accused and also that the Bank was not involved with Tinju Dunia.

PW28 said that to the best of his recollection PW18 raised the question of Tinju Dunia on that occasion but in cross-examination stated that he was not sure which director in fact raised the question, and that he could be wrong when he said PW18 did so. He said that the question asked was whether the Bank was involved in Tinju Dunia and the 2nd accused replied that it was not, and he added that the 3rd accused was then present but he could not say if the 1st accused was. There would appear to be some doubt on the part of this witness as to who in fact asked the question but the point remains that a question about the Bank's involvement with or in Tinju Dunia was in fact raised. He was sure of that.

I accept the fact that the question was asked and a reply given by the 2nd accused thereto at that Board meeting, as, even if the evidence as to who asked the question is equivocal, the evidence of the witnesses I have referred to is consistent as to the fact of the reply given by the 2nd accused. The question and answer do not appear in the Minutes but, as I have already said earlier, under By-law 50 the Minutes are not exhaustive of all matters that take place at a Board meeting. Haji Bahari was not called as a witness by the prosecution but at the close of its case was offered as a witness to the defence.

I must add that quite apart from the denial attributed to the 2nd accused there was no mention of Tinju Dunia or the transaction effected by reason of P12 to the Board on that day by any of the three accused. Furthermore, at that meeting there was a discussion on the position and expansion of the Bank's group and the 2nd accused spoke of the need to reorganise the subsidiaries of the Bank by forming a holding company. In the context of such a discussion I would have expected the 1st and 2nd accused to have at least touched on the position of Tinju Dunia in relation to the Bank. Nor was there any such disclosure to the Annual General Meeting of the Bank on 6th September, 1975.

I now come to the Board meeting on 5th November, 1975. Haji Mohamed bin Haji Yacob (PW22), a director of the Bank, gave evidence on a question he raised at this meeting. I would pause here to say that I was impressed by the demeanour of this witness and the upright and honest manner in which he gave evidence; he remained unshaken despite somewhat vigorous cross-examination. This witness testified that at this Board meeting at which all the three accused were present he raised the question of Tinju Dunia which was not however on the agenda but that when he put the question the 1st accused had left the meeting. He said that he addressed one Hassan bin Itam who was then in the chair enquiring whether Tinju Dunia was making a profit or not. The 2nd and 3rd accused were present when he raised this question, and the 2nd accused replied that Tinju Dunia had no connection with the Bank and that the profit and loss was not known as the accounts had not been completed, and the witness said he was sure of the answer given by the 2nd accused. He said that he raised this question towards the end of the meeting under the item "Other matters" when the directors were given an opportunity to raise any questions, and did so because he had read in the newspapers that the 2nd accused's name was connected with Tinju Dunia. He also said that the 2nd and 3rd accused did not say that the shares and stock of the Bank had been pledged as stated in P12.

I have no reason to disbelieve PW22 and again it is significant that at this Board meeting there was a briefing by the 2nd accused and as a result a decision by the Board to establish a holding company to be named Kumpulan Rakyat Berhad but no mention was made in the briefing of the position in relation to Tinju Dunia, but on the contrary there is this evidence of PW22 as to the denial by the 2nd accused of its connection with the Bank. It would therefore appear from what occurred at the Board meetings on 29th August and 5th November, 1975, that a strong inference manifests itself that Tinju Dunia was not and never was intended to be connected with the Bank or its group.

Police investigations into this matter commenced on 5th October, 1975, when PW1 lodged a police report (P2) for this purpose.

The next event is the meeting of the Executive Committee on 27th November, 1975, when, according to the Minutes in D22, the 2nd accused informed the meeting of the complaints made by Tun Razak regard-

ing the Bank's activities at a briefing to him given by the 2nd accused on 28th October, 1975. The 1st and 3rd accused were also present at this meeting and no mention was made of Tinju Dunia or the transaction effected by P12, and it will presently be apparent why this omission is of considerable significance when I deal with the statement made by the 1st accused at an emergency meeting of the Board on 12th March, 1976.

Datuk Sulaiman bin Ninam Shah (PW20), the Vice-Chairman of the Bank, testified that he attended an emergency meeting of the Board on 12th March, 1976, as a result of a telegram (P45) he received on 9th March, 1976. He said that he had in fact written a letter to the 3rd accused as Secretary on 12th February, 1976, (P46) requesting a Board meeting to be convened in view of the police investigations and as there was no reply to his request he had to write again to the 3rd accused on 2nd March, 1976, (P47). It was only after this that he received a letter dated 5th March, 1976, from the 3rd accused (P48) to the effect that he would discuss the request for a Board meeting with the 1st and 2nd accused and then get in touch with the witness when the date was fixed. The result was this emergency Board meeting of 12th March, 1976.

The 1st accused was arrested in the morning of 12th March, 1976, and did not therefore attend the emergency Board meeting held that morning which commenced at 10.15 a.m. The 2nd accused was out of the country then but the 3rd accused was present and he said to the Board, according to the Minutes in P7, that the meeting was specially called for by the 1st accused to explain matters relating to investigations by the police and the Registrar of Co-operative Societies, and that it was expected that the 1st accused would be able to attend the meeting in the afternoon. The morning session was adjourned at 11.00 a.m. to the afternoon to enable the 1st accused to be present, and immediately after this adjournment the 3rd accused was arrested in his office at the Bank, and the 1st and 3rd accused were brought before the Sessions Court that morning. The meeting resumed at 2.45 p.m. with the 1st accused in the chair and the 3rd accused also present.

At the afternoon session of this emergency Board meeting, the 1st accused made a statement in which, *inter alia*, he said that the meeting was called to clarify the position of Tinju Dunia to the Board in order to find ways and means to safeguard the interests of the Bank. He went on to explain that the involvement of the Bank in Tinju Dunia was openly done and not in secret and that he himself had met and consulted Tun Razak who agreed that the fight be held but not by using Government money as the nation was facing a recession, and that Tun Razak was informed about a suggestion to use the Bank's funds to which he agreed, and with that agreement he (the 1st accused) had directed the 2nd accused, the Managing Director of the Bank, to study the boxing project. He said that during the consultation with Tun Razak it was also agreed in principle that if any loss were incurred, the Government would consider reimbursing the loss and that there would also be exemption from income tax. He went on, *inter alia*, to state that as a result Tinju Dunia was formed and explained that although the facilities, finance and officers of the Bank were used in the implementation of the Tinju Dunia project, he deliberately did not want the boxing project to be legally connected with the Bank, not with the intention to cheat but purely with the intention to protect the interests and security of the Bank from any claims and litigation and the like, and that, in such circumstances, legally Tinju Dunia had no connection with the Bank but in reality it did.

Before I proceed to deal with what else transpired at that meeting, I should perhaps at this stage consider the statement made by the 1st accused that Tun Razak had agreed to a suggestion to use the Bank's funds and that it was with that agreement that he directed the 2nd accused to study the project and that as a result the project was implemented. Although this statement by the 1st accused at the meeting on 12th March, 1976, would appear to be hearsay evidence, it is a statement made by him at that meeting and duly recorded in the Minutes of that meeting (in P7) which were duly confirmed and signed by him and the 3rd accused as required by the By-laws, and I shall therefore certainly consider it as evidence of what was said at that meeting. In effect, therefore, the 1st accused has sought to attribute the use of the Bank's funds to the approval he obtained from Tun Razak. Even if that statement were true, that would not of course legalise the use of the Bank's funds and assets if it were otherwise unlawful. Tun Razak had, of course, no authority in the administration of the Bank under the Ordinance, Rules and By-laws and, in any event, even assuming that he did so agree as is alleged, there is no evidence that he was informed or made aware at any time of the *modus operandi* intended to be had recourse to or indeed later resorted to by means of P12, and I would also refer to the evidence of PW28 in re-examination in this connection.

The statement that the 1st accused made at that Board meeting was an attempt to justify himself before his colleagues on the Board. If, indeed, Tun Razak had authorised the use of the Bank's funds and assets then surely the manner in which the fight was financed would and could not have been effectuated in the way it was. The Bank could have by reason of such authority boldly and openly pledged the shares and stock and caused the issue of the Letters of Credit to be had at its own behest in its own name and on its own account. Again, the 1st accused would and should then have brought the matter of financing the fight before the Board and informed it of the Prime Minister's agreement to use the Bank's funds for this purpose and obtained its approval if Tun Razak had indeed authorised this. He did not do so. The defence contends that the Board would in fact have approved the action taken but there was no disclosure at all to the Board or the Executive Committee as I have already said until after the arrest of the 1st and 3rd accused.

It would appear to me that whatever authorisation Tun Razak gave was only as deposed to by PW5 to the effect that he gave the green light and Government backing in order to assist the successful staging

of the fight, and nothing more. If Tun Razak had indeed agreed to the suggestion by the 1st accused for the use of the Bank's funds for the fight, I would have expected to see an open involvement of the Bank in the use of its funds. But the evidence discloses that the promoters or sponsors were named to be UMNO Youth without any mention of the Bank. Furthermore, the 1st accused's statement at that meeting refers to Tun Razak's refusal to use Government funds because of the recession and this would seem to presuppose a suggestion made to him to this effect. I cannot therefore see how he could have agreed to the use of the Bank's funds which, in fact, comprise moneys belonging to a large section of the public in the less affluent group, nor could it have been possible or conceivable in these circumstances for Tun Razak to have agreed that the Government would consider reimbursing the loss, if any, as the 1st accused informed the Board that day.

If Tun Razak had indeed agreed to the use of the Bank's funds for this purpose, it is also difficult to understand how he could have made the adverse comments on the business activities of the Bank at the briefing he received from the 2nd accused on 28th October, 1975, and which the 2nd accused reported to the Executive Committee at its meeting on 27th November, 1975, and furthermore when the complaints by Tun Razak were discussed at that meeting I would have thought that this would have been the obvious time and occasion when the 1st and 2nd accused and perhaps even the 3rd accused could and should have observed that the use of Bank's funds for the purposes of Tinju Dunia and the fight had been made on the authority and with the agreement of Tun Razak.

I have already referred to the evidence of PW5 as to the meeting in the General Hospital after the 1st accused's return from Kuwait regarding the matter of financing the fight, and if what the 1st accused said about Tun Razak was true then it was certainly not necessary for him to ask for ideas for financing the fight. He could have immediately instructed the 2nd accused to make use of the Bank's resources and there was no necessity for the 2nd accused to reply as he did that this was a possibility which would be considered.

And quite apart from all this, if indeed Tun Razak had agreed to and authorised the use of the Bank's funds, then I would have expected this to be one of the first things the 1st accused would have said to PW1 when he took a statement from him on 27th January, 1976, but no question was ever put to PW1 in relation to this in the course of his cross-examination.

In the light of all these circumstances, I cannot accept there was any authority from Tun Razak to use the Bank's funds as the 1st accused alleged in his statement to the Board on 12th March, 1976.

To revert to the proceedings of the Board meeting on 12th March, 1976, I should also refer to the evidence of PW20 who said that he asked the 3rd accused if Tinju Dunia had connection with the Bank and whether any payment had been made by the Bank to Tinju Dunia to which the 3rd accused replied that he was not in a position to know about this. In cross-examination by counsel for the 3rd accused, this witness said this was what took place at the meeting although it does not appear in the Minutes of that meeting which were, of course, prepared and on confirmation signed by the 3rd accused himself. This witness then told the 3rd accused rather sharply that as Secretary and General Manager he should know. It was then only that the 3rd accused said a rough amount of $7.7 million had been spent by the Bank for Tinju Dunia. Nothing was said about the pledging of the shares and stock or P12 and, in answer to me, PW20 said that the 3rd accused did say he was not in a position to know about Tinju Dunia having connection with the Bank and that it was then that he got angry and asked for a rough figure in a rough manner.

This disposes of the various matters and occurrences in the chain of events pertaining to this case, and I now turn to deal with the charges preferred.

For the purposes of the forgery charge jointly made against the three accused under section 468 of the Penal Code, the prosecution has to prove three main points, namely, (1) that P12 is a false document within the meaning of the first limb in section 464; (2) that the making of the false document comes under, at least, one of the intents in section 463; and (3) that P12 was intended to be used for the purpose of cheating.

Under the first limb in section 464 there are four ingredients to be proved, namely, that the accused (a) made, signed or executed P12; (b) intended P12 to be believed as having been made by or by the authority of the Investment Committee of the Bank; (c) knew P12 was not so made; and (d) made P12 dishonestly or fraudulently.

As to (a), I have already said that there is sufficient evidence adduced to prove and establish this and the defence concedes this is so. As to (b), the evidence is P12 itself which purports to be a resolution of the Investment Committee and was accepted as such by PW13 and PW14, and it was on the strength of P12 that the shares and stock were accepted as collateral security and the Letters of Credit opened. As to (c), I have already dealt with the matter of the 1972 Investment Committee and the 1975 Investment and Loan Committee and the several circumstances pertaining to and culminating in the resolution in question in considering the purport and effect of P12 generally. And if there was no meeting of whichever of the two Committees as such and despite this all the three accused signed the resolution in P12 giving the appearance that such a resolution was in fact passed by that Committee, the obvious inference is that they knew P12 was not made with the authority of that Committee. And as to (d), the intention of the accused must have been dishonest or fraudulent. I would merely observe that there is sufficient evidence to establish a fraudulent intent within the meaning of section 25 of the Penal Code and the principles enunciated in *Seet Soon Guan* v. *Public Prosecutor*[3] and *Dr. Vimla* v. *The Delhi Administration*[4] and other decided authorities, but it is not necessary to pursue the question of fraudulent intention as the prosecution has in fact indicated that it will rest its case only on dishonest intention on the part of the accused.

It might be appropriate at this stage to refer to the definition of 'dishonestly' in the Penal Code. Section 24 provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing 'dishonestly'. Section 23 defines 'wrongful gain' as gain by unlawful means of property to which the person gaining is not legally entitled, and 'wrongful loss' as the loss by unlawful means of property to which the person losing it is legally entitled. The section continues to provide that a person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully, and a person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property.

In the present case there is the purported passing of a resolution which was made to appear as that of the Investment Committee of the Bank, it was made without authority and with the intention of causing the Bank by unlawful means to part with or be kept out of its property, namely, the shares and stock, and by means of P12 the accused were able to secure the Letters of Credit for Tinju Dunia by pledging the assets of the Bank. I have already dealt with the circumstances which in fact, in my view, point to a dishonest intention on the part of the accused within the meaning of the Penal Code.

With regard to the intent necessary under section 463, disregarding the first intent therein which is not relevant and the last two which pertain to the commission of fraud, there would appear in this case to be an intent to support a claim or title because P12 purported to give authority or power to pledge the shares and stock, an intent to cause the Bank to part with its shares and stock, and an intent to enter into a contract as the transaction relating to the pledging of the shares and stock was contractual, the consideration in return for the issue of the Letters of Credit by FNCB for the benefit of Tinju Dunia being the lodgment and pledge of the shares and stock of the Bank as security.

With regard to the third matter to be proved for the purposes of section 468, namely, that P12 was intended to be used for the purpose of cheating, the prosecution need not prove the actual commission of the offence of cheating but only that the three accused intended P12 to be used for the purpose of cheating. The intention to use P12 is reflected in the evidence when it was handed to PW14 and that it was for the purpose of cheating is proved by the evidence of PW13 and PW14 to the effect that without P12 FNCB would certainly not have accepted the security offered nor issue the Letters of Credit.

Cheating is defined in section 415 and the requisite elements proved therefor are deceiving FNCB and inducing it to issue Letters of Credit on account of Tinju Dunia which would come under that part of the section which refers to the delivery of any property to any person or to the doing of something which FNCB would not do if not so deceived, and such act was likely to cause damage or harm to FNCB in property, as without P12 the pledge would have been inefficacious and the security lodged would not have been accepted.

Now turning to the charge of criminal breach of trust, section 405 of the Penal Code defines this offence and specifies some five modes in which it can be committed. In this case it would appear that it has been proved both cumulatively and severally that the 2nd accused has dishonestly misappropriated to his own use the shares and stock or that he has dishonestly used or disposed of the shares and stock in violation of a direction of law prescribing the mode in which the trust is to be discharged, and also in violation of a legal contract of service which he has made touching the discharge of that trust.

The 2nd accused holds a triple role in Tinju Dunia as its Chairman and Managing Director as well as a shareholder, and when therefore he pledged the shares and stock of the Bank with FNCB it can be reasonably held that in doing so he misappropriated the property of the Bank to his own use. With regard to using or disposing of the shares and stock in violation of a direction of law or his contract of service or both, it is evident from a consideration of the Ordinance, Rules and By-laws, particularly in the light of the fact that this was a matter for the Board of the Bank to decide, if at all, the approval of the Registrar of Co-operative Societies had not been obtained and the transaction in question was outside the objects of the Bank in By-law 5, and also considering the evidence of the directors to the effect that no power to pledge the shares and stock had ever been delegated to all or any of the three accused, that the 2nd accused was therefore clearly in effecting the pledge acting in violation of a direction of law and his contract of service, and what was in fact done in this case would, in my view, amount to a device for using the Bank's property for the benefit of Tinju Dunia in which the 1st and 2nd accused were interested respectively as Adviser and as Chairman, Managing Director and shareholder. There was as a result a wrongful gain to Tinju Dunia and a wrongful loss to the Bank. I have already disposed of the argument raised regarding the effect of By-law 55 on the powers of the 2nd accused as Managing Director of the Bank.

On the question of abetment by the 1st and 3rd accused of criminal breach of trust, it is clear from the evidence that the 1st accused not only knew of the transaction in question and was a party to P12 but furthermore he had in fact suggested to the 2nd accused at the General Hospital to utilise the Bank's funds for the purposes of the fight. As to the 3rd accused, he was a party to P12 and also P15 and P16 and there is moreover evidence of his subsequent conduct which I have referred to in connection with P46 and P47 and his somewhat prevaricating and averse attitude at the emergency Board meeting on 12th March, 1976, highly suggestive of an attempt to conceal information as to the Bank's involvement in Tinju Dunia, and also the testimony of PW1 that as a result of his investigations he had good reason to believe that the 3rd accused might abscond and further regarding his uncooperative attitude in the investigation which necessitated the service on him of an order under section 51(i) of the Criminal Procedure Code (P5) for the production of the requisite books and documents.

The Supreme Court of India held in *Jaswantrai Manilal Akhaney* v. *State of Bombay*[5] that if a person

entrusted with some property belonging to another is proved to have so acted in relation to it as to cause wrongful gain to himself or to some other person, or to cause wrongful loss to the owner or to some other person having a beneficial interest in that property, it must be held that he has 'used or disposed of' that property in contravention of the conditions of the entrustment, within the meaning of that expression as used in section 405 of the Penal Code, and that he has done so 'dishonestly'. In such circumstances, the *mens rea* must be held to have been established even though the deprivation may have been only for a short period and there may not have been any intention on the part of the accused to have any permanent gain to himself or cause any permanent loss to the person entitled to that property. It is quite immaterial whether the wrongful deprivation of property to its rightful owner is permanent or only temporary, and further if it is established that the accused had acted with the intention of causing wrongful loss to the owner, it is equally immaterial whether his intention was or was not to make a wrongful personal gain to himself. Therefore, the facts in that case that the accused had re-pledged those securities only temporarily, that he had no motive of personal gain, and that he had acted as he did only in the interest of his own bank, were of no avail to the accused on the charge of criminal breach of trust, once it was proved that he had pledged those securities intentionally and with full knowledge that he was thereby causing a wrongful loss to their owners.

The evidence does disclose that the 2nd accused has purported to exercise some of the powers of the Board and on that score the defence contends that what he did was honest and *bona fide*, but on the evidence before me and in law these powers were usurped by him without lawful authority. He clearly had no such power or authority to do so when he initiated this form of malpractice and therefore his action in causing wrongful loss to the Bank cannot but be inexcusable from the standpoint of criminal liability. The position here is not dissimilar to that in *Mangal Sen* v. *Emperor*[6] where even a subsequent resolution sanctioning the unauthorised loan made by Mangal Sen did not exonerate him. The Supreme Court of India held in *Krishnan Kumar* v. *Union of India*[7] that a circumstance such as that an accused has otherwise dealt with the property entrusted in a manner different from the one which is enjoined as part of his official duty is a strong circumstance against him as regards his dishonest intention.

The shares and stock were in the possession of the 2nd accused and he was entrusted with them and with dominion over them and this as I have said has been established by the evidence and conceded by the defence, he was not delegated with any power to pledge them for the purposes of Tinju Dunia's benefit and accordingly by so pledging he committed the offence of criminal breach of trust. It was held in *Daulat Rai* v. *Emperor*[8] that dishonestly using and disposing of property contrary to a bank's articles of association and thereby causing the shareholders to declare a dividend larger than the profits warranted amounted to criminal breach of trust. The position is not dissimilar in relation to the acts of the 2nd accused in this case in acting against the express directions of law contained in the statutory provisions including the By-laws and thereby intentionally causing wrongful loss to the Bank. In *N.N. Burjorjee* v. *Emperor*[9] it was held that when a person makes use of money belonging to another without the latter's consent, and contrary to the purpose for which possession thereof has been given by the latter to the former, the intention of the person so making use of that money must *prima facie* be dishonest within the meaning of section 24 of the Penal Code.

In connection with the charge of abetment by the 1st and 3rd accused of criminal breach of trust by the 2nd accused, I find that the acts of the 1st accused in respect of abetment fall within all three limbs of section 107 of the Penal Code, namely, abetment by instigation, conspiracy and intentionally aiding. With regard to the 3rd accused, his acts come under abetment by conspiracy and intentionally aiding.

Instigation consists of acts which amount to active suggestion or support or stimulation for the commission of the main act or offence. Advice can also become instigation if that advice is meant to actively suggest or stimulate the commission of an offence (*Ragunath Das* v. *Emperor*[10]). Abetment by conspiracy consists in the combination and agreement of persons to do some illegal act or to effect some illegal purpose by illegal means. Proof of conspiracy need not be direct proof but can be a matter of inference deducted from certain criminal acts of the accused done in pursuance of an apparent criminal purpose in common between them (*Emperor* v. *Abdul Hamid*[11]). Abetment by aiding takes place when a person by the commission of an act intends to facilitate and does in fact facilitate the commission of an offence (*Faguna Kanta Nath* v. *State of Assam*[12]). Where there is shown a positive act of assistance voluntarily done by a person with a knowledge of the circumstances constituting the offence, the abettor is guilty of abetment by aiding (*National Coal Board* v. *Gamble*[13]).

I have already referred to the evidence with regard to abetment by the 1st and 3rd accused and would merely reiterate that that is reinforced by the various facts and circumstances disclosed in the evidence which I have discussed in dealing with the sequence of events in this matter. The circumstances which I have referred to with regard to the 1st and 3rd accused show that they had knowledge of and actively and deliberately assisted in and agreed to the commission of the offence of criminal breach of trust and this is exacerbated by their silence at the Board meetings on 29th August and 5th November, 1975, particularly in the face of the questions raised and the answers given by the 2nd accused. I would also repeat that with regard to the 2nd accused there is abundant evidence in the matters I have already dealt with pointing to his having committed criminal breach of trust and having a dishonest intention.

To recapitulate the several circumstances showing dishonest intention against the three accused, I would briefly enumerate them as the pledging itself which offends against the Ordinance, Rules and By-laws, that both the 1st and 2nd accused had no power to do so individually or jointly, the execution by the three accused of P12, by the 2nd accused of P11 and P13

and by the 2nd and 3rd accused of P15 and P16, the statement made by the 1st accused appearing in P18(1), the total non-disclosure to the Board or the Executive Committee of P12 or the transaction effected as a result thereof amounting to virtually wilful concealment, the denials of the 2nd accused at the Board meetings on 29th August and 5th November, 1975, the use of United Manufacturers' funds on the authority and instructions of the 2nd accused on a 'pay first and resolve later' basis and the transaction relating to the repayment of $6 million to FNCB disclosed in D24 and D25, the attempts in cross-examination of the prosecution witnesses to show that Tinju Dunia is a subsidiary of Rakyat Corporation in the face of the evidence adduced so as to justify the use of the Bank's funds and assets, and the manner in which the emergency Board meeting of 12th March, 1976, was held by force of compelling circumstances.

I also find that the three accused as the principal officers of the Bank must have known and knew that the transaction effected by virtue of P12 was in violation of the Ordinance, Rules and By-laws and that it is not inconceivable that the purpose of the proposal mooted at the Board meetings on 29th August and 5th November, 1975, for the reorganisation of the subsidiaries might well have been to obfuscate the affairs of the Bank and in particular the Bank's involvement in Tinju Dunia behind the facade of a holding company to avoid recognition by the eye of the vigilant.

It is therefore clear in the face of all these and the other circumstances and matters I have discussed and dealt with that the evidence discloses that the accused in relation to the offences in question in this case acted dishonestly within the definition thereof in section 24 of the Penal Code.

I accordingly found that a case had been made out against the three accused on the charges preferred against them which if unrebutted would warrant their conviction thereon and so called on them to enter on their defence.

3. *Case for the Defence.*

Before I turn to the defence as such, I should perhaps first touch on and deal with the submission of counsel for the 3rd accused that the forgery charge is defective in so far as the 3rd accused is concerned as the facts of the case do not support the charge. Briefly, he states that it is a joint charge but the evidence adduced by the defence discloses that on 5th May, 1975, the 2nd accused went to the office of the 1st accused where they held a meeting and it was there that they both signed P12 in the absence of the 3rd accused who only signed it later at the Bank's premises. He submits, therefore, that the charge is defective in alleging the commission of the offence at the premises of the Bank at 140 Jalan Ipoh, Kuala Lumpur, and further that if P.12 is a false document then the offence was completed at the office of the 1st accused when he and the 2nd accused signed it and, at worst, when the 3rd accused signed P12 he was only abetting the offence of forgery but no such charge can be sustainable as he would then only be an accessory after the fact and accordingly committed no offence known in law. In answer to a question put by me, he states that his submission that the offence of forgery, if any, was complete when the 1st and 2nd accused signed P12 is premised on the fact that there was an interval of time between their so signing and the 3rd accused appending his signature thereon.

I am unable to find any substance in this contention and would consider the fact that P12 was signed in two places cannot affect the validity of the charge as such. There is evidence that P12 was prepared by the 2nd accused at the Bank's premises on 5th May, 1975, with the names and designations of all the three accused typed therein and they only appended their signatures at different places. The evidence for the defence discloses that the 1st accused agreed over the telephone to the making of P12 which was in fact done at the Bank's premises as stated in the charge. This was accordingly a continuing act or transaction which was completed when the signatures of all the three accused were appended although this was done at two different places. It is clear from P12 itself that it was intended to be signed by all the three accused and it was so signed, and the evidence supports this. I cannot therefore see how the offence can be complete when the 1st and 2nd accused signed P.12, and as to the venue designated in the charge, in any event, even though the signing of P12 might have in fact taken place at two different places, this would only be a mere and wholly minimal irregularity which I cannot for a moment consider as affecting the proceedings or taking the accused by surprise or resulting in any miscarriage of justice. The fact that counsel for the 1st and 2nd accused have not thought it fit to raise this question of the venue in the charge would seem to support and substantiate my conclusion on this aspect.

I have considered the evidence adduced and all aspects and matters raised by and on behalf of the defence but it would however be impracticable to set out and deal with each and every point in any great detail.

The 1st accused gave evidence to the effect that in matters involving secrecy and urgency, he and the 2nd accused without the prior approval of the Board made unilateral decisions in relation to the formation or acquisition of subsidiaries. He would then leave the matter for the 2nd accused to take the necessary action, and when the matter was eventually brought before the Board the action taken would be ratified by the Board without fail. The same applied to the investment of moneys in and advances of capital to subsidiaries. The actual machinery for implementing these unilateral decisions was determined by the 2nd accused. He added that by the end of 1974 he had no doubt that the Bank would ratify any action taken by him without the prior approval of the Board. I would have thought that in those circumstances there was all the more reason for him to inform the Board or the Executive Committee of the action taken with regard to P12, as, following from his evidence, ratification would have been virtually automatic and a mere formality.

Coming to the UMNO Youth Executive Council meeting on 31st March, 1975, the 1st accused testified that he did ask the meeting after it had agreed in principle to stage the fight about financing and chided them by saying that they knew how to make decisions

and then asking whether they also knew how to go about it as far as management and financing was concerned. The members asked him to look into it. He added that he said the most important thing was to get the approval of the Prime Minister, Tun Razak, and also the financing, as to which, to his mind, he could think of only two bodies which could possibly finance the fight, one being the Bank and the other the Selangor State Development Corporation. He added that he thought he mentioned the Bank to the meeting and indicated to the members that they might have to go on a joint venture with the Bank not only because of finance but also the management personnel. PW5 however had said in cross-examination by counsel for the 1st accused that he could not remember a discussion on the question of finance but in re-examination clearly stated that the question of finance was not discussed at that meeting.

It is therefore necessary now to consider the evidence of some of the UMNO Youth Executive Council members who were present at that meeting and testified on this aspect of a discussion regarding the finance for the fight. They are Saidin bin Tamby (DW10), the Executive Secretary of UMNO Youth, Azhar bin Alias (DW11), Aziz bin Salehuddin (DW12), Hussein bin Mahmood (DW13), Abdul Kadir bin Haji Sheikh Fadzir (DW14), all members of the UMNO Youth Executive Council, and Zakariah bin Haji Yahaya (DW16) who was present as adviser to DW10 who had just taken over from him as Executive Secretary.

I should perhaps say a word about these witnesses. With the exception of DW13, these witnesses evinced in favour of the 1st accused a partisan attitude and as militant a spirit as a battalion of commandos, which they tried to but could ill-conceal, and indeed one of them, DW12, in an emotional outburst, declared that even this case was a political trial and that justice could not be expected in an unjust case, but promptly and courteously apologised when I told to behave himself, carefully adding that he was referring to the events preceding this trial and was not laying the blame on this court. They could hardly contain in the course of giving evidence what they no doubt honestly considered to be their righteous indignation at the trials and tribulations they said the 1st accused had undergone. They all had a close relationship with the 1st accused and in one way or another appeared to be obligated to him, and expressed admiration for and looked to and supported him as a party leader. In giving evidence of what they called political pressures on the 1st accused they did not hesitate to take the opportunity to use these proceedings as a forum to ventilate and expose certain aspects of political rivalry. DW10 whilst lamenting the fact that the 1st accused ceased to be the UMNO Youth President in 1976 as a result of his expulsion from UMNO was not very convincing when he said he did not want the 1st accused as the Youth leader any more, and DW14 expressed disappointment (and so did DW11) and annoyance at the 1st accused's prosecution in this case. But all this manifestation of commendable loyalty is, of course, no reason by itself why their evidence as to what happened at the meeting on 31st March, 1975, should not be accepted if reasonably true in the light of the other evidence adduced.

The gist of the evidence of these witnesses is that at that meeting the question of finance was discussed immediately after the decision in principle to go ahead and sponsor the fight, and in the course of that discussion on finance, one or two names like Tun Mustapha and Lim Chooi Seng were mentioned, but none of them could remember who did so, and then DW14 interposed to oppose any profit from the fight on the sponsorship of UMNO Youth being given to an individual and suggested that whatever profit derived from the fight should be given to the people, and he suggested the Bank, and DW12 who was seated beside him supported this suggestion.

DW10 said in evidence that everyone paid attention when DW14 spoke and that his suggestion to approach the Bank was just left at that. DW11 said that DW14 has a clear and loud voice and spoke loud and clear to stress the point he made and that the 1st accused must have heard him very clearly, and went on to add that DW14 normally asked the others to be quiet when he spoke as he liked everybody to listen to what he had to say. DW16 testified to the same effect. DW12 said that he supported DW14's proposal but could not remember the 1st accused saying anything to that. DW13 testified to the discussion in respect of the agreement in principle to stage the fight but could not however remember if any other aspect was discussed. In answer to a specific question in examination-in-chief he said that DW14 said something but he could not remember what and that in fact everybody took part in the discussion. DW14 also said that the 1st accused did not say anything to his suggestion and DW16 in his evidence said the same thing. DW16 said quite clearly that all present on being told to do so by DW14 kept quiet and then DW14 spoke, and that he spoke loudly and all present heard him clearly, but DW16 could not remember if anybody seconded DW14's proposal.

On this evidence it would appear the 1st accused must have heard what DW14 said, and clearly. It is strange therefore to say the least in the light of all this that the 1st accused in his testimony did not say anything at all about DW14's suggestion, and none of these witnesses said anything either about what the 1st accused said in his evidence he had told the meeting about going into a joint venture with the Bank which I have referred to. PW5 said quite clearly that the question of finance was not discussed and it would also appear most unlikely for such an important matter to have escaped the attention or recollection of DW13. If the 1st accused had forgotten to say this in examination-in-chief and could not be led, then it would still have been possible for this to have been elicited from him in the course of cross-examination by counsel for either of the other two accused as I was repeatedly informed that all counsel for the defence in this case were working as a team. It is therefore extremely difficult for me to accept the evidence of these witnesses on this aspect as reasonably true or raising a reasonable doubt on the case for the prosecution.

I might as well while I am about it deal with the evidence given by these witnesses on certain other aspects. DW10 said that he went to the 1st accused's office bringing with him the projection papers he got from Mike Ong (D64) to tell the 1st accused about Mike Ong's proposal, but the 1st accused said that

DW10 in fact only telephoned him in this connection. DW10 said that Mike Ong brought several copies of the projection papers (D64) and distributed these copies at the meeting on 31st March, 1975, but DW12 said that DW10 made photostat copies of D64 and brought these copies to the meeting. He testified that a day after the meeting on 31st March he briefed the Secretary-General of UMNO on the possibility of sponsoring the fight in Kuala Lumpur and told him that possibly they would ask the assistance of the Bank to finance the fight.

DW10 also said that at the airport on 1st April the 1st accused gave instructions to the 2nd accused to the effect of co-operation, as he put it, between the Bank and UMNO Youth, and that the question of financing the fight never arose at the airport meeting. I will be referring presently to the evidence of the 1st and 2nd accused as to this. DW11 said that all he could remember the 1st accused saying at the airport was that Tun Razak had given the green light for UMNO Youth to sponsor the fight, and that apart from that he could not remember anything else. DW16 said that at the airport the 1st accused told him to discuss the matter with the 2nd accused to study the profitability of the project and to look into the possibility of using the facilities of the Bank.

DW10 said that at the hospital there was no discussion about the sharing of profits if there was a profit, which one would normally expect to be discussed and determined in any joint venture. He also testified that there were meetings of the directors of Tinju Dunia and minutes of such meetings were taken. It is clear however from D26(A) which only contains circular resolutions that there were no directors' meetings of Tinju Dunia as such, and DW16 also said in evidence that he had attended directors' meetings of Tinju Dunia at which the Secretary of Tinju Dunia was present. This is, of course, contrary to what PW23, the Secretary, said in evidence, and there is in fact an entry by PW23 dated 16th February, 1976, on the reverse of D26(A2) stating that there are no other minutes or resolutions made or other meetings held apart from what is contained in D26A which is the Minute Book of Tinju Dunia. In re-examination, DW10 said that he thought that there were directors' meetings of Tinju Dunia held after PW23 resigned as Secretary which was in March, 1976. And in answer to me, he said that he knew Tinju Dunia is a subsidiary of the Bank but did not know if it has a connection with United Manufacturers or Rakyat Corporation. I would think this an astonishing state of ignorance for a director of Tinju Dunia if indeed Tinju Dunia is a subsidiary of Rakyat Corporation or is otherwise related to the Bank.

DW11 said that at the meeting on 31st March, 1975, the 1st accused made no comments apart from remarks as to how to get the money and that it was important to have the co-operation and backing of the Government. He agreed that UMNO Youth expected a slice of the profits for its sports complex but said the percentage of profits UMNO Youth would be entitled to was not discussed at the meeting. He also admitted that if the 1st accused had not taken all the necessary action to bring the fight to a reality the UMNO Youth Executive Council would have been disappointed with him.

DW12 said that the proposal for the fight was a special item on the agenda for the meeting on 31st March, but this does not appear to be so according to DW10 who was corroborated on this aspect by the other witnesses and, in particular, DW14. DW12 said that after the decision was made to sponsor the fight at that meeting, the responsibility for implementing the decision was left to the 1st accused and the question of finance was also left entirely to the 1st accused to consider, look for and arrange. He is supported on this by the evidence of DW14 who said that the question of finance was left to the 1st accused. DW12 also said that at a breakfast session of the UMNO Youth Executive Council the 1st accused informed them that PW5, DW10 and DW16 would represent UMNO Youth in Tinju Dunia but he did not remember the 1st accused saying who the other party in Tinju Dunia was, but DW16 said in his evidence that the 1st accused had said at a breakfast session of the UMNO Youth Executive Council that the Bank had agreed to co-operate in the staging of the fight.

DW13 could not remember if Mike Ong had produced any documents to substantiate his estimates on income and expenses when briefing the UMNO Youth Executive Council whereas all the others said that he did in fact refer to D64. With the exception of this witness, the others present testified that the 1st accused did not seem keen on the fight, and the 1st accused said this himself. I would not think the fact that the 1st accused was not enthusiastic about the staging of the fight of any material importance as once the decision in principle was reached by the meeting on 31st March, the evidence is clear that the implementation of the decision, the obtaining of Government approval and backing and all the other steps necessary to bring the fight to a reality including the question of finance were left by the UMNO Youth Executive Council to the 1st accused and he did in fact take steps to act accordingly to that end. What really matters for the purposes of this case is how this was done and whether by lawful means or otherwise. His initial enthusiasm or lack of it would therefore appear to be of no significance or consequence.

DW14 gave evidence to explain why the 1st accused was not keen about the fight "especially considering the various pressures from various political quarters", to use his own words. He also gave evidence of the political pressures applied on the 1st accused around that time and the other witnesses likewise testified to the same effect. The 1st accused in cross-examination by counsel for the 2nd accused spoke of the serious problems on his mind and referred to events commencing in June, 1975, which was about a month after the date when the offences in question are alleged to have been committed. I cannot accept the suggestion that the political or other pressures and problems which the 1st accused faced would be any excuse at all for his acts which have resulted in the charges preferred in this case.

DW14 said that UMNO Youth expected a slice of the profits from the fight for the construction of its sports complex and also that he understood from the 1st accused that the fight was a joint venture between UMNO Youth and the Bank but admitted that he did not know who would bear the loss, if any, or whether

in the event of a profit the Bank would be entitled to a share of the profits. He tried to explain this statement by saying that he did not know the details of the apportionment of profits or loss but added almost in the same breath that he would think UMNO Youth would be entitled to a share of the profits. DW16, who is a director of Tinju Dunia, said that the matter of getting funds for Tinju Dunia from the Bank was left to the 1st accused but not to the 2nd accused, that the directors of Tinju Dunia did not concern themselves in the matter of arranging funds for Tinju Dunia, and that the question of finance was left to the 1st accused because he was the Chairman of the Bank and the President of UMNO Youth.

In the light of the several aspects of the evidence of these witnesses in the circumstances I have denoted, I am unable to say that their individual and combined testimony has raised any reasonable doubt in my mind.

Reverting from this digression to the evidence of the 1st accused, he said that at the airport he told the 2nd accused to study the feasibility report which Mike Ong had submitted and the possibility of having a joint venture between UMNO Youth and the Bank, and that only the possibility of going into this joint venture between UMNO Youth and the Bank was mentioned then. The 2nd accused however said in evidence that the 1st accused told him at the airport that he thought that he (the 2nd accused) could organise the fight and to see what he could do about this and discuss this with the UMNO Youth Executive Council, adding that the Bank should be involved in this. I have already dealt with the UMNO Youth Executive Council members' evidence on this point.

With regard to the Investment and Loan Committee of 1975, the 1st accused said PW28 suggested that the Committee should also be given powers to consider investment but this was never put to PW28 in cross-examination and, in fact, PW28 said in evidence that he could not recollect the question of investment being discussed at the Board meeting when this Committee was set up and that the discussion then was centred on the granting of loans to members.

The 1st accused said in evidence that he had three meetings with Tun Razak regarding the staging of the fight, and that the first was the day after the UMNO Youth Executive Council meeting, that is, on 1st April, 1975, when he saw Tun Razak for about 20 minutes during the lunch hour and briefed him on the decision of the UMNO Youth Executive Council on the fight. He then gave evidence of what Tun Razak said whereupon I immediately raised the question of the admissibility of this evidence but the prosecution indicated it would take no objection to its admission and admissibility, and when the evidence proceeded somewhat, I had occasion again to raise this question, specifically referring to section 32 of the Evidence Act, 1950, but again the prosecution refused to make any objection and I accordingly made a note to that effect. However, in the course of final submissions, the prosecution contends that the evidence of what Tun Razak is alleged to have said to the 1st accused is irrelevant and inadmissible under section 32 of the Evidence Act and should be disregarded.

I must immediately say that I deprecate the stance adopted by the prosecution on this aspect as any objection to admissibility should have been made before the evidence was admitted and not after, and not only that but after considerable examination had taken place on that evidence. I could not *ex mero motu* refuse to admit this evidence at the time it was given as in the light of the stand then taken by the prosecution I would have unilaterally exercising my authority and acting even against the wishes of the prosecution taken away a substantial line of defence which all the accused no doubt seek to rely on. It is true, as indeed I myself pointed out when it was sought to be admitted, that this evidence of what Tun Razak is alleged to have said is strictly inadmissible under the Evidence Act, but having been admitted as a result of the somewhat nonchalant attitude assumed by the prosecution and indeed its active acquiescence in this regard, and the defence accordingly lulled into the belief that it has been accepted as evidence as a result, I canot see how and why I can or should disregard it now without being unfair to the defence in the event, as I am of the view that in these circumstances every latitude should be given to the defence for the purposes of the presentation of its case. I must and will therefore consider this evidence which is before me and assume that the prosecution adopts the same magnanimous attitude in view of the stand it took at the time when any objection to admissibility should have been properly taken but was not despite my raising the point.

The 1st accused said he told Tun Razak at this first meeting with him that the prospect of making money was good and asked him what he felt if he brought in the private sector, and that he did mention the Bank, to which Tun Razak replied that it was a good thing and that he could go ahead, adding that even if there was a loss of one or two million it would be worth it. He also said that when he asked Tun Razak what he thought of the decision of the UMNO Youth Executive Council and the possibility of bringing Muhammad Ali to fight in Kuala Lumpur, the Prime Minister said that he did not think the Government should stage the fight in view of inflation, remarking "What will people say of us?", all this perhaps spontaneous or more likely in response to a suggestion made to him to that effect by the 1st accused. The 1st accused said that as a result he got the impression that Tun Razak had given his blessing to the fight and to the involvement of the Bank with UMNO Youth. The 1st accused also said that he received an assurance from Tun Razak of support from Government departments and Ministries.

I have carefully considered this aspect of the 1st accused's evidence and would refer in this connection to my observations with regard to the statement made by him at the emergency Board meeting on 12th March, 1976, as to what Tun Razak had said to him. The same considerations would apply to the evidence of the 1st accused on this aspect and a number of other questions arise as well, for instance, why did he not also mention the Selangor State Development Corporation which he had in mind as one of two possible sources of finance for the fight or any other source in the private sector for that matter, and also why did he not mention Tun Razak's agreement to involve the Bank and use the Bank's funds to any of the people who met him at the airport later that same afternoon

when he was leaving for Kuwait, as none of them said so. The 1st accused has said in evidence that to him Tun Razak was the key man and it would appear to me that what he did in fact go to Tun Razak for and obtained from him was political support from him as the party leader and also Government backing to ensure the successful staging of the fight.

However, in any event, whether or not Tun Razak had agreed to the use of the Bank's funds as is alleged, what matters in this case is whether the method employed for such use was by lawful or unlawful means, and obtaining the authority or consent of Tun Razak for involving the Bank in the venture would appear to be wholly irrelevant for the reasons I have already given as this would not and could not by itself legalise the position, particularly as on the evidence Tun Razak did not know the method that was to be or was in fact utilised for having recourse to the Bank's funds and assets for the purposes of Tinju Dunia. It is also of some importance that the 1st accused in his evidence did not mention anything about Tun Razak agreeing that the Government would consider reimbursing the loss, if any, as he reported in his statement to the Board at its emergency meeting on 12th March, 1976, and as I have already pointed out in dealing with that statement, Tun Razak could not possibly have said that in view of his refusal to commit public funds for staging the fight. And on the evidence of the 1st accused, Tun Razak in speaking of a loss was not talking in terms of hundreds or thousands of dollars but a million or two at least.

The 1st accused also gave evidence of a second meeting with Tun Razak sometime around 17th May, 1975, when he went to the latter's office together with DW16. This visit was in connection with the names of the members of the Co-ordinating Committee which he said Tun Razak had agreed to appoint, and as a result he later received D50 from Tun Razak. He said that at this meeting he briefed Tun Razak not in detail but of what had taken place and, in particular, regarding the formation of Tinju Dunia. From this evidence it would appear he did not mention the Bank because if he did I would have expected him to have said so. But DW16 who was with him at that meeting said in evidence that the 1st accused informed Tun Razak that the Ali fight would be a joint venture between UMNO Youth and the Bank, and in cross-examination went on to add further that the 1st accused at this meeting did say to Tun Razak that Tinju Dunia would get money to stage the fight by using the facilities of the Bank, and reiterated that he remembered the 1st accused did say that. If DW16 is correct in his testimony, what was the necessity for the 1st accused to say all this when according to him Tun Razak was already aware of the involvement of the Bank at their first meeting on 1st April?

There was yet a third meeting which the 1st accused said he had with Tun Razak sometime in May or early June, 1975. This was at Tun Razak's residence at breakfast time and the 2nd accused also went along. The 1st accused said that on this occasion the question of getting a guarantee for tax exemption was discussed and Tun Razak assured both of them that he would take the matter up with the Treasury, and the matter of getting a date from Tun Razak for a launching dinner for the publicity campaign for the fight was also discussed. But according to the 2nd accused, in discussing the question of tax exemption, he did explain to Tun Razak that since the Bank was involved in the staging of the fight, the benefit of the tax exemption would not be enjoyed by any person but by the Bank as an institution, and the 2nd accused went on to add that Tun Razak at this meeting appeared to have knowledge that the Bank was involved in staging the fight. Here again if indeed the Bank was mentioned it is surprising the 1st accused did not say this in his evidence. There would thus appear to be some material discrepancies as to Tun Razak's cognizance of the Bank's involvement at the second and third meetings the 1st accused had with him and whether the Bank was in fact mentioned on those occasions in the light of the evidence I have referred to.

The 1st accused said that at the General Hospital when the question of the formation of Tinju Dunia was mooted, there was a discussion as to who should be the directors of that company and he named as UMNO Youth representatives PW5, DW10 and DW16, and the 2nd accused mentioned himself, PW12, PW29 and Khairuddin Musa as representatives of the Bank. PW5 however in his evidence said that although the three UMNO Youth representatives in Tinju Dunia were named at the hospital he could not recollect any decision on that occasion regarding the appointment of representatives of the Bank in Tinju Dunia. But DW10 on the other hand corroborates the 1st accused as to the 2nd accused proposing the names of the Bank's employees including himself to be directors of Tinju Dunia. I might mention that although both the 1st and 2nd accused and PW5 said DW16 was present at this meeting at the hospital, DW16 himself said he was not in the group that went to see the 1st accused at the hospital and that two or three days after that he was informed by DW10 that he (DW16) had been appointed as one of the directors of Tinju Dunia to represent UMNO Youth.

The 1st accused agreed in cross-examination that the Chairman and the Managing Director of the Bank cannot unilaterally do what the Board has power to do without authority from or delegation by the Board. He agreed that there was always an elected member of the Board of the Bank appointed to sit on the Board of subsidiaries, and both he and the 2nd accused agreed there was none on the Board of Tinju Dunia. It is significant and necessary in this connection to refer once again to the fact that though it was sought to be shown that the presence of officers of the Bank on the Board of Tinju Dunia showed the Bank's connection with that company, the evidence of PW29 clearly shows that the appointments were made by the 2nd accused himself, and PW29 still continues to be a director of Tinju Dunia although he has since resigned from the Bank.

The 1st accused agreed that according to D38, PW12 who went armed with it to the United States was sent on a mission on behalf of UMNO Youth and not of the Bank. He said that at the airport he gave details of his discussion with Tun Razak earlier that afternoon and that it was not true he did not,

but PW5, the 2nd accused and the other witnesses who were present at the airport did not say this. He said that now that Tinju Dunia has suffered a loss it was very difficult for him to say if UMNO Youth would bear part of the loss but then agreed that the Bank would have to suffer all the loss and later admitted that in fact the loss in this venture by Tinju Dunia is in fact a loss by the Bank.

The Annual Report of the Bank for 1973-74 (P57) contains a chart (P57A) showing the subsidiaries and joint ventures of the Bank. The 1st accused said that Tinju Dunia was not mentioned in P57A because there was no thought at that time. The 2nd accused in his evidence said with regard to P57 that the cover was printed soon before the Annual General Meeting on 6th September, 1975, but the inside contents had been printed quite sometime before, about two to three months before 29th August, 1975, in an attempt to explain the omission of Tinju Dunia in the chart in P57A and presumably because the two messages contained inside the cover are dated 18th and 23rd August, 1975, respectively. But looking at the contents of P57, this cannot be correct as there is a reference to the Johore Bahru Branch of the Bank in the contents and its inauguration on 19th July, 1975, and I might also add that although the cover of P57 states it is an Annual Report for 1973-74, the Bank's activities for 1975 are not excluded in the contents as there is also a reference to the opening of the Kuantan Branch on 20th January, 1975. P57 was circulated at the Annual General Meeting on 6th September, 1975, and the 1st accused said that he first saw P57 on the morning of that meeting and that this booklet was not brought before the Board or the Executive Committee and he added that it was distributed to the members at the Annual General Meeting to show the activities of the Bank.

Assuming that it was not possible to include Tinju Dunia for mention either in P57 generally or in P57A, I would have expected at least perhaps some oral supplementation by way of reference to it at the Annual General Meeting and evidence to this effect if in fact this had been done, if it is in fact part of the Bank's group. In this respect there is also the evidence of the 3rd accused who said that he knew of the printing of P57 and that this was arranged by the Public Relations Department of the Bank which handles all such publications, and that prior to the publication of all such material by the Bank, the Public Relations Department would keep him and the 2nd accused informed of their programme for publication and after receiving agreement in principle normally from the 2nd accused but at times only from him, that department would then handle the rest. It would appear therefore that either or both the 2nd or 3rd accused could not have been unaware of the publication of P57 and its contents.

Again, there is the souvenir programme for the fight (D58) which contains messages from Tun Razak, the President of the Malaysian Boxing Federation, the 1st accused as Mentri Besar of Selangor and the 2nd accused as Chairman and Managing Director of Tinju Dunia. There is profuse reference therein to UMNO Youth as the sponsors and Tinju Dunia as the promoters but not a word about the Bank or its involvement in this matter. I would add that the message by the 2nd accused refers to the honour he felt in his personal involvement in the greatest sporting event ever staged in Kuala Lumpur.

The 1st accused said under cross-examination that he was not informed of the purse moneys required for the boxers until 5th May, 1975, but he had earlier said, also under cross-examination, that Mike Ong had mentioned at the briefing given by him on 31st March, 1975, that Ali's purse would be U.S.$2 million and Bugner's U.S. $500,000. The 1st accused agreed that P12 does not refer to either a loan or an investment, that he thought the signing of P12 was a formality and that he was conscious of the purpose and contents of P12 before he signed it and that he signed it to achieve its purpose, and he also admitted that without his signature P12 would be a valueless piece of paper, and that he was advised by the 2nd accused that P12 was necessary for the purposes of pledging the shares and stock.

The 1st accused said that it was correct that on 5th May, 1975, he would not allow the fight to be called off and, in answer to a question put by me, explained that on that day the fight project appeared so profitable that it would have been stupid to let it pass. This statement by him is understandable in the light of the considerable commitments already entered into prior to that date to the extent of at least some U.S. $750,000 previously paid by the Bank through United Manufacturers which would no doubt under the Agreements (P17) have been subject to forfeiture in the event of the cancellation of the fight, quite apart from the travelling and other expenses incurred by PW12, Mike Ong and Jack Rennie which were also paid by United Manufacturers, and coupled with this is the fact, as I have already pointed out, that the implementation of the decision by the UMNO Youth Executive Council to stage the fight was left to him, and in view of the evidence I have referred to that that body would have been disappointed with him if he had not done so, his prestige and standing with them would also have been affected.

He explained the report in P18(1) by saying that PW4 had since told him that he had been threatened with arrest if he did not give evidence as he did with regard to what appears in P18(1). But the point is that the report was written on 17th May, 1975, and when this was put to him he said that the only explanation was that PW4 might have misunderstood him and made a mistake, and he agreed that in respect of the statement attributed to him in that report that UMNO Youth had deposited $10 million, PW4 was lying. It is interesting in this connection to consider the evidence of the 3rd accused when he said that he was sent photostat copies of the press cuttings of the *New Straits Times* and *Berita Harian* (D21 and D63) by the Public Relations Department of the Bank and it was usual for them to do so. He had read the reports in those two newspapers and also read the press cuttings sent to him two or three times and then read the photostat copies as well. But with regard to P18(1) he said in answer to me that he received no such photostat copies or cuttings of the report

therein from the Public Relations Department but that he may have read the newspaper report itself, adding that photostat copies or cuttings were only sent to him when the news related to the Bank.

I now come to the 1st accused's speech at Teluk Anson on 2nd June, 1975. The 1st accused said that at the inauguration of the Teluk Anson Branch of the Bank, in the course of a speech he made explaining the activities of the Bank, he mentioned that the Bank was responsible for bringing the Ali-Bugner fight to Kuala Lumpur. On this he was corroborated by both the 2nd and 3rd accused and also another three witnesses called on his behalf, Abdul Aziz bin Mat Ludin (DW6), Kamaruddin bin Abbas (DW7) and Mohamed Nasir bin Omar Shah (DW8). These three witnesses manifested obvious bias for the 1st accused. DW6 who expressed admiration for the 1st accused as a great leader and a good speaker had volunteered to give evidence as he was very concerned to see justice done, and in giving evidence he clearly revealed a pattern of patent partisanship. DW7 took great pains to impress upon me his social standing by emphasising the fact that he is a Justice of the Peace while making his affirmation before proceeding to give evidence. He too volunteered to give evidence and has political affiliations with a desire to see UMNO united and strong. DW8 when asked if he knew of the world championship fight in Kuala Lumpur in 1975 could not contain his excess of zeal and anxiety to give evidence and after replying in the affirmative, thereupon immediately launched into what the 1st accused said at Teluk Anson on 2nd June, 1975, even before a question to this effect could be asked of him by counsel for the 1st accused, although he said in cross-examination that before coming to court he did not know what evidence he was expected to give. This witness also said that he respects the 1st accused and looks upon him as a great leader in this country and hoped he would continue to be a leader.

I have already dealt with this matter of the 1st accused's speech at Teluk Anson in considering the case for the prosecution and referred to the fact that only one out of the other directors who were present on that occasion and gave evidence heard a statement to that effect and also what such disclosure in fact amounts to. The evidence on this aspect must also be considered in the light of a report of the Teluk Anson proceedings in the *New Straits Times* issue of 4th June, 1975, (P62) which refers to and sets out a report of the 1st accused's speech on the activities of the Bank but no mention is made at all in the report about the 1st accused saying that the Bank was responsible for bringing the fight to Kuala Lumpur. The fight was at that time already a topic of fervent and intense current interest and if indeed there had been such a statement by the 1st accused as the evidence for the defence discloses, I would certainly have expected it to have been mentioned in P62. In the circumstances I cannot accept the evidence adduced by the defence on this matter as raising any reasonable doubt.

I need say no more about D21 which I have already dealt with and the equivalent report in the national language in the *Berita Harian* issue of the same date (D63). The 1st accused said that the final decision to stage the fight was in fact made at the hospital after the briefing he received from the 2nd accused on that occasion. He agreed that ratification by the Board of the Bank was necessary in respect of the decision taken by him and the 2nd accused to invest in the fight and that this was in accordance with past practice, but said that by implication he felt that he and the 2nd accused had the power to so invest but then agreed that they did not in fact have that power. He also agreed that until the day he ceased to be Chairman of the Bank sometime in April, 1976, his action and that of the 2nd accused to involve the Bank in Tinju Dunia had not been ratified by the Board and that he did not mention to the Board at its emergency meeting on 12th March, 1976, after his arrest about the pledging of the shares and stock.

He also said in answer to me that he did not mention Tun Razak's approval to use the Bank's assets for the fight at the Executive Committee meeting on 27th November, 1975, because Tinju Dunia did not cross his mind then but that he did say generally that what they had done in many cases had been with Tun Razak's approval although this does not appear in the Minutes of that meeting in D22. I would have thought as I have said earlier that the mention of Tun Razak's approval in the matter of the Bank's involvement in Tinju Dunia would have deflated the complaints made by Tun Razak regarding the Bank's activities which were discussed at that meeting.

Now turning to the evidence of the 2nd accused, I must mention that I observed him taking down copious notes in the course of these proceedings and particularly when the 1st accused was in the witness box, and he gave his evidence in a carefully prepared and studied manner, exuding at times an aura of arrogance.

The 2nd accused said that the Board at one of its meetings gave him his powers as Managing Director which are spelt out in clause 3 of his service contract (P56) but was unable to say which meeting this was or to find anything in the minutes of the Board meetings in this connection after a scrutiny of the relevant file (P7). On this aspect it is interesting to note the evidence of the 3rd accused in dealing with P56 when he said that the powers of the 2nd accused as Managing Director were conferred upon him at a Board meeting in 1968 prior to his appointment although the evidence shows that the 2nd accused joined the Bank on 1st January, 1969, as General Manager and only became Managing Director sometime later after the Bank's By-laws had been amended to provide for such an appointment. The 3rd accused maintained that the 2nd accused could have been mistaken in his evidence but that what he (the 3rd accused) said was correct.

The 2nd accused said that P56 was the only contract of service he signed with the Bank. That does not seem to be correct in view of the recital in P56 but for the purposes of this case the prior agreement does not seem to be material or relevant. The 2nd accused has raised in his defence the contention that as Managing Director he had, and indeed believed

he had, adequate authority under P56 to effect the transaction under P12 and the pledging of the shares and stock, and I think I should dispose of this aspect immediately.

Whether or not the 2nd accused had authority under P56 or believed he had such authority cannot, in my view, be relevant or affect the position as the impugned transaction in the matter of the pledging of the shares and stock was effected by virtue of and consequent upon P12 which clearly by its very heading, contents and import purports to be a resolution of the Investment Committee of the Bank signed by all the three accused. The 2nd accused was not purporting to exercise his own authority as Managing Director under any powers which he claims was conferred upon or vested in him as such. I am only concerned with the intention of the 2nd accused when he made and signed P12 and effected the consequent pledge of the shares and stock as a result and not with any hypothetical intention on his part if he had in fact purported to act himself in the exercise of his powers as Managing Director of the Bank. It is pertinent that in giving evidence on this, the 2nd accused said that in any event *he believed he could have authorised the transaction as Managing Director*, referring by his own words to a situation different from that effected by means of P12.

The 2nd accused gave evidence that if the 1st accused was not available on 5th May, 1975, when P12 was made, he would have tried to get at least another director of the Bank who was a member of the Committee in question to get this resolution done or alternatively he would have sent a letter to FNCB stating that he had the authority to execute the transaction as the Managing Director of the Bank. When I asked him however why he did not exercise his powers if he could do so and thus save all the trouble of having a resolution of any Committee drawn up, he said in reply that if he had told PW13 that no resolution was necessary and he had the power as Managing Director to pledge the shares and stock, PW13 might not have believed him, and he added that he felt P12 was the normal requirement. This is clearly a resilement from his previous evidence and puts a highly dubious content upon his belief in his own powers if he indeed had any. It seems clear therefore that he was not himself convinced of his own belief in the extent of his powers.

In this connection, I would refer to the evidence of the 2nd accused that he also telephoned PW13 in the morning of 5th May. I would pause to question the necessity for this telephone conversation as he had already spoken to PW13 over the telephone on 2nd or 3rd May and, furthermore, this question of the telephone conversation on 5th May was never put to PW13 in cross-examination, and indeed PW13 said in examination-in-chief that he could not recollect having more than one telephone conversation with the 2nd accused prior to the receipt of P13 which only refers to the telephone conversation they had on Saturday 3rd May with no mention of any other on the morning in question. Be that as it may, the 2nd accused testified that in the telephone conversation on 5th May, PW13 mentioned that apart from the security the FNCB would require a resolution from the Bank for the lodgment of the shares and stock with them, and in cross-examination he added that in mentioning a resolution from the Bank PW13 said that if it was not a Board resolution then a resolution of an investment committee of the Bank or of any similar committee would suffice. Again this matter was never put to PW13 in cross-examination. The 2nd accused said that he did not tell PW13 the powers he had under his contract of service (P56) in the telephone conversation he had with him.

I would once again pause to wonder what made PW13 mention an investment committee as he gave no evidence of having any knowledge of the existence of any such body. And above all this PW13 apparently did not know to whom the security to be lodged belonged because in giving evidence he never said that he was told by the 2nd accused in the only telephone conversation they had, according to him, on 2nd or 3rd May that the shares to be given by way of security belonged to the Bank and he was never cross-examined on this. And indeed this is borne out by the contents of P8 which is the memorandum from PW13 to PW14 as a result of that telephone conversation and which merely states that the 2nd accused proposed to give FNCB shares in Dunlop Estates as security with no mention made of the Bank as the owner.

I cannot in view of all these circumstances accept the fact that the 2nd accused had or believed he had the authority to effect the pledging of the shares and stock. While I am on the question of his supposed powers as Managing Director, I might mention that the 2nd accused in what I consider to be sheer bravado or perhaps even desperation to justify the stand he was taking in relation to his powers as Managing Director, arrogantly declared in cross-examination that he could dispose of the moveable or immoveable property of the Bank without the prior approval of the Board, and, I would observe, in so doing clearly overstepped the bounds of credulity, but in re-examination, perhaps on a realisation of the impact of this statement, he was virtually led, in answer to a question specifically put to him by counsel appearing for him, into adulterating this brazen-faced statement by saying that he could do so if he considered it to be in the interest of the Bank. If indeed he had any such power then there would be no necessity for the Board or the Executive Committee or an Investment or Investment and Loan Committee or any other committee of the Bank for that matter, and the 2nd accused could override and render impotent even the Registrar of Co-operative Societies himself and perhaps also the supreme authority of the Bank, its General Meeting, and would in effect be in a position to wield greater omnipotence than even the Attorney-General in his capacity as Public Prosecutor could venture to claim in the exercise of his powers under Article 145(3) of the Federal Constitution in relation to section 418A of the Criminal Procedure Code which I declared unconstitutional in earlier proceedings.

Having said all this I should perhaps still deal with the powers of the 2nd accused as Managing Director under By-law 55 and P56 as this is a substantial line of defence taken on his behalf. I have already indicated that By-law 55 is no more than a

provision for the appointment of a Managing Director and does not confer any powers on him as such. With regard to P56 I cannot accept the submission of the prosecution that P56 was not in force and subsisting on 5th May, 1975, when P12 was executed and the pledging of the shares and stock effected. The effect of the submission made by the prosecution, expressed once again in allegory, would appear to be that on the expiration of the period of three years from 1st January, 1971, specified in P56, the 2nd accused continued only as a tenant at will, or perhaps even at sufferance, of the executive chair he was no doubt occupying as Managing Director but shorn of the powers and duties he had under P56. It is true that his initial term of appointment as Managing Director under P56 expired on 31st December, 1973, but the Executive Committee at its meeting on 8th April, 1974, (according to its Minutes in D22) unanimously agreed to re-appoint the 2nd accused as Managing Director when he exercised his option to renew the contract under clause 1 of P56 and appointed a sub-committee of four persons to consider his terms of service, salary and so forth. This sub-committee has never met but under clause 1 of P56 and until fresh terms and conditions of his service were determined and agreed, the provisions of P56 must necessarily continue to apply.

It is next necessary to consider the terms of P56 and the material provision therein is clause 3. On a considered examination of that clause I cannot see that it gives any such power in relation to the transaction in question as is contended for on behalf of the 2nd accused. The first point is that in any conferment of powers by the Board, it cannot empower the 2nd accused as Managing Director to do what it itself cannot do. This is clear and obvious in law but By-law 55 nevertheless specifically provides to that effect. And the Board can of course only do what is within the competence and power of the Bank. A natural person has the capacity to do all things save such as are forbidden or prohibited by law. But this rule is reversed in the case of a corporation (which the Bank is by virtue of section 8 of the Ordinance), and, in relation thereto, what the governing statutory provisions do not expressly or impliedly authorise or permit is to be taken to be prohibited not by virtue of any express or implied statutory prohibition but by the doctrine of *ultra vires* (*Ashbury Railway Carriage and Iron Co. Ltd.* v. *Riche*;[14] *Attorney-General* v. *Great Eastern Railway Co.*;[15] *Public Textiles Berhad* v. *Lembaga Letrik Negara*[16]).

If what P12 effected is an investment which I have held it is not, it could not be done without the approval of the Registrar of Co-operative Societies under section 33(e) of the Ordinance. If it purported to be a loan, and again I have held it is not, then section 30 of the Ordinance would apply as the Bank can only make loans to its members. I might mention that in answer to a question put by me, after consulting and taking instructions from the 2nd accused, his counsel confirmed that the Bank can only make loans to its members, but the next morning, on being given leave by me, counsel sought to argue that on the basis of Rules 4(1) and 6 of the Rules and By-laws 5(ii)(1), 76, 42 and 51(i)(28) and (34), the Bank can in fact make loans to non-members as well, and that even section 33(e) of the Ordinance may apply for this purpose. I find this contention wholly devoid of substance and merit, and in any event would point out that no provisions in the Rules or By-laws can infringe or circumvent those of section 30 of the Ordinance in this respect.

Looking at the terms of clause 3 of P56, it authorises the Managing Director to exercise, carry out and observe all such powers, duties, directions and restrictions as the Board may from time to time confer or impose upon him. There were numerous restrictions imposed by the Board on the 2nd accused, for instance, by the decisions of the Executive Committee at its meetings on 27th November, 1973, (Agenda 1.3), 14th August, 1974, (Agenda 5.1) and 27th November, 1975, (Agenda 9.2) in the matter of granting loans. And the Board at its meeting on 26th March, 1975, (Agenda 12.3) specifically empowered applications for loans exceeding $100,000 to be considered only by the Investment and Loan Committee. It is clear therefore that the 2nd accused could only grant loans up to a limit of $100,000. The 2nd accused agreed under cross-examination that despite his powers under P56 he was bound by the decision of the Board on any specific matter and further agreed that the establishment of the Investment and Loan Committee of 1975 was a decision of the Board on a specific matter with regard to loans, and he added also investments, in respect of the Bank's funds.

On the matter of investments, there were also restrictions on the powers of the 2nd accused by virtue of the establishment by the Board on 14th January, 1972, of the Investment Committee of 1972 which was vested with power to make investments up to $200,000. The 2nd accused was only one of the members of this Committee. This again was a restriction on his power, if any, to invest and in fact amounts to a prohibition because only the Investment Committee can do so. The Board at its meeting on 14th January, 1972, (Agenda 10.4) discussed the matter of an investment principle or policy for the Bank and this in fact was fully mooted and laid down at a meeting of the Executive Committee on 7th April, 1972, (Agenda 7.1 and 7.2). This was another restriction on the 2nd accused although he said in evidence that what was laid down were merely guidelines and not a direction or restriction imposed on him. The words used however in the minutes are 'principle', 'policy' and 'plan' and not 'guidelines', but in any event in almost the same breath the 2nd accused agreed under cross-examination that he was bound by the decisions of the Board at its meetings on 16th July, 1973 and, 10th September, 1974, fixing the rates of interest.

The Executive Committee at a meeting on 28th July, 1972, (Agenda 2.6) also established a sub-committee to consider the possibility of establishing subsidiaries. This again was another restriction and clearly shows that the 1st and 2nd accused between them could not decide to form subsidiaries and what they did was in fact beyond their powers. The 2nd accused brought to the attention of the Board at its meeting on 16th February, 1973, (Agenda 6.1) and a decision was made in the matter of housing loans to members. This again clearly shows that he could

not act unilaterally and was bound by restrictions and directions in the exercise of his powers.

Clause 3 of P56 then goes on to say that in default of the first part thereof which I have dealt with, the 2nd accused shall control the general management of the business of the Bank with power to appoint, promote and dismiss officers, clerks and servants of the Bank (with four exceptions) and to enter into any trade contracts on behalf of the Bank in the ordinary way of business. This clause cannot and does not confer all the powers of the Board but only general management powers. As I have said the 2nd accused admitted that he is bound to follow the decisions of the Board on specific matters. The suggestion that the 2nd accused has power to invest or otherwise deal with the assets of the Bank without the approval of the Board by virtue of clause 3 of P56 would render the Board redundant and a nonentity.

Effecting the pledging of the shares and stock is certainly not a trade contract on behalf of the Bank in the ordinary way of business. Trade contracts would pertain to the day-to-day running of the business of the Bank and must be subject to the provisions of the Ordinance, Rules and By-laws of the Bank, and any restrictions imposed or decisions made by the Board or the Executive Committee. They must be entered on behalf of the Bank which means such contracts only as the Bank itself can competently enter into under the Ordinance, Rules and By-laws. They must be in the ordinary way of business and the staging of the fight is certainly not nor is it within the objects of the Bank in By-law 5. There is no question therefore that the pledging of the shares and stock can come within the powers claimed by the 2nd accused under this clause in P56.

With regard to the last part of clause 3 in P56 empowering the 2nd accused to do all other acts and things which he may consider necessary or conducive to the interests of the Bank, this is purely a residuary and incidental power and cannot go beyond the express powers previously enumerated. In acting under that clause the 2nd accused would be subject to the provisions of the Ordinance, Rules and By-laws and more particularly the provisions of sections 30 and 33 of the Ordinance, and he can only exercise such powers as are within the competence of the Board (By-law 55). The utilisation of the shares and stock to raise funds for Tinju Dunia was not within the objects of the Bank and the staging of the fight was outside the scope of the affairs of the Bank.

It is therefore clear that the provisions of clause 3 of P56 even if of any relevance can be of no assistance or avail to the 2nd accused and I cannot accept the fact that he could and did honestly or reasonably believe he had any such powers thereunder in relation to the transaction effected on 5th May, 1975. I have dealt with all this at some length in deference to the point laboriously taken in this regard by counsel for the 2nd accused but reiterate once again that P12 was not made by the 2nd accused nor was the pledge effected on the basis of his powers under P56 but by him, according to his own evidence, as a member of the Investment and Loan Committee of 1975.

In relying on the contention that the 2nd accused at the time he signed P12 thought or believed he was so authorised, counsel for the 2nd accused submits that this raises the defence of good faith under section 79 of the Penal Code. Now this section refers to an act done by a person who is justified by law or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it. And when I asked counsel what was the law by which the 2nd accused believed himself to be justified in executing P12, he referred to the law of contract which, as he put it, 'in this case is controlled by P56 which is a contract of service.' I regret I find this answer unintelligible and unacceptable. I cannot see how section 79 can apply in this case and the evidence for the defence reinforces what I have stated earlier that if there was any mistake at all it was only a mistake of law. For section 79 to apply the 2nd accused must believe himself to be justified by law and I can see no law on which he could base any belief for justification.

Counsel for the 2nd accused contends that there is nothing in the evidence to refute the belief of the 2nd accused that Tinju Dunia is a subsidiary of the Bank, and that this belief was founded on perfectly reasonable grounds because the Bank was the financial source of Tinju Dunia. If that were indeed so, then perhaps on this line of reasoning Tinju Dunia could equally be said to be a subsidiary of FNCB which was also a substantial source of its finance. This argument therefore unfortunately resolves itself into the question whether Tinju Dunia's position as a subsidiary or sub-subsidiary turns on the Bank being its financial source or inversely on the latter being the result of the former — a classic case of circular tail-chasing with no forward movement on the pattern of the age-old enigma of the chicken and the egg ventilated but still unresolved in the corridors of time as to the progenitorial precedence of the two.

It might perhaps be apposite at this stage to observe that the contentions advanced on behalf of the 2nd accused as to the position of Tinju Dunia not only demonstrate the uncertainty in relation thereto in his own mind but also result in a paradoxical and ludicrous situation which in effect amounts to a contradiction in terms. If the Bank's funds and assets were used for Tinju Dunia because it is a subsidiary of Rakyat Corporation, the latter was however strangely unaware it is the parent of the former, on the evidence of PW17, the then Chairman of Rakyat Corporation, which I have already touched upon, although the Bank through Rakyat Corporation purports to be its grandparent and disbursed its moneys and utilised its assets on that basis. If on the other hand Tinju Dunia is a subsidiary of the Bank because the Bank's funds and assets had been made available to it, then there ensues a somewhat incestuous sort of relationship, as then it would be the brother or sister, whichever it is, of Rakyat Corporation although by virtue of the purported allotment of 9998 shares in it to Rakyat Corporation, the latter should in fact be its parent. In these circumstances it would seem obvious that the incongruous contentions raised before me in these proceedings are no more than a hindsighted attempt at legitimation of this ill-begotten and unfortunate stray.

The 2nd accused in dealing with the power of the

Bank to pledge its assets said in evidence that the Bank had the power to pledge its investment shares for the purposes of securing the Letters of Credit for Tinju Dunia's requirements and relied on section 3A(3) of the Ordinance for this power, but when I pointed out to him that the 'corporation' referred to in section 3A was the Registrar of Co-operative Societies and not a registered co-operative society, he agreed that section 3A(3) could not apply, and then added in answer to a question in cross-examination by counsel for the 1st accused that until I pointed this out to him he was under the impression that section 3A(3) of the Ordinance gave the Bank the power to pledge. This again, if at all, would be a mistake of law which is no defence under the Penal Code. I regret I am unable to understand what counsel for the 2nd accused means when he says in his final submission that section 3A(3) of the Ordinance should be read along with section 8, as the latter has nothing to do with the earlier section and only provides for a registered co-operative society to be a body corporate with certain powers specified therein which have no bearing upon such a transaction as that effected by means of P12. I cannot also in the light of all the circumstances accept the contention counsel for the 2nd accused raises to the effect that if the 2nd accused knew he had no authority to make the pledge, then the making and signing of P12 and the pledging of the shares and stock amounts to no more than a mere abuse of his authority, as it is clear from all the circumstances that he abused his authority and abused it criminally.

Returning to the main stream of the evidence of the 2nd accused, he said that he was quite apprehensive of future litigation against the promoter of the fight and it was for this reason that the Agreements (P17) were signed under the name of Tinju Dunia to protect the interests of the Bank. The 1st accused also gave evidence that from the beginning he anticipated some sort of litigation. It would not therefore be unreasonable to infer that the possibility of a loss was not wholly absent from their minds. Both the 1st and 2nd accused said in evidence that they were convinced of the huge profits that would accrue from the fight and it is for this reason that the venture was launched, and that certain subsequent events and circumstances unfortunately caused the fight to be a financial failure. This might have been so, but I am concerned with the means adopted in using the Bank's assets, and the expectation of a large profit, when considered in the light of how Tinju Dunia stands in relation to the Bank, might indeed suggest the use of the Bank's assets only as a transitory expedient to put Tinju Dunia on its feet at a critical time when it needed monetary facilities, with the expectation for the subsequent repayment to be made from the expected profits, as indeed P8, P12, and the evidence of PW12 and PW14 which I have touched on would seem to indicate.

The 2nd accused said that at the General Hospital the 1st accused told him to get the Bank to pay the US$350,000 which had to be remitted immediately to PW12 in the United States, but all that the 1st accused said was that he asked the 2nd accused to look into it and to carry on and make the payment required as earnest money. And DW10 who was present at the hospital said that he thought the 1st accused told the 2nd accused 'that facilities be obtained from the Bank.'

The 2nd accused was careful not to use the phrase 'joint venture' in respect of the connection between the Bank and UMNO Youth in Tinju Dunia, and when I specifically raised this point with him, he said that Tinju Dunia was not a joint venture but a joint effort between UMNO Youth and the Bank, and this phrase was significantly echoed by the 3rd accused in his evidence although the 1st accused did not mince words and referred to it as a joint venture.

The 2nd accused said that the payment of the US$350,000 as earnest money by United Manufacturers was decided on by him 'as a matter of convenience' as Tinju Dunia had not yet been formed then, and that another payment of about US$400,000 due under the Agreements (P17) was made on 1st or 2nd May, 1975, again through United Manufacturers and that both these sums came from the Bank. If indeed the Bank was involved at the inception I can see no reason for this dubious and surreptitious method of payment and why the moneys could not have been remitted direct by the Bank. I refer in this connection to the entries in D26(C1) which I drew attention to in regard to Tinju Dunia when considering the case for the prosecution and which show in fact some direct dealings between Tinju Dunia and the Bank.

He said in evidence that he told PW26 to whom he dictated P12 that he wanted it quickly because the 1st accused was waiting for him, but PW26 neither said nor was cross-examined on this. The 2nd accused also said that he told the 1st accused on that morning that the 3rd accused normally acts as Secretary to committees of the Bank and that he would see him later with respect to P12. Here again the 1st accused did not say this nor was he cross-examined thereon. The 2nd accused in giving instances where the 3rd accused had signed documents similar to P12 was only able to refer to documents required for the purposes of opening bank accounts, agreements executed in the name of the Bank and Powers of Attorney made by the Bank in favour of its Branch Managers.

The 2nd accused agreed that looking at P12 now it is a resolution and not minutes, and said that he might have dictated it as such or it could have been a typing error and that at the time he signed P12 he did not realise the error. This reference to minutes however is repeated in P11. Again he said that the reference to Investment Committee in P12 was in fact to the Investment and Loan Committee of 1975 but the same reference again appears in P11.

He admitted that the two letters granting tax exemption on the purses of the boxers (D51 and D52) are addressed to him as the Executive (or Managing) Director of Tinju Dunia. In giving evidence about his meeting with the Minister of Finance and the Treasury officials as a result of which he received D51 and D52, he said that he disclosed to them that the Bank was the financial source of Tinju Dunia. However, he agreed in cross-examination that all discussions he had with the Treasury officials was in his capacity as the Managing Director of Tinju Dunia although in examination-in-chief he tried to stress the fact that in receiving a telephone call to go to the Treasury, he identified himself to the caller as the Managing Director of the

Bank. And even if he did indeed make the disclosure which he said he did, there is nothing in D51 and D52 to indicate this and in any event from his own evidence he apparently did not mention how and in what manner and by what means the Bank was to provide the finance. The whole question of intention in this case turns on whether or not the accused acted dishonestly within the meaning of section 24 of the Penal Code which in turn relates back to section 23 which, *inter alia*, refers to the employment of unlawful means in defining 'wrongful gain' and 'wrongful loss'.

A specimen of the complimentary tickets issued for the fight (D59) mentions the patronage of Tun Razak, the auspices of UMNO Youth and the presentation of the fight by Tinju Dunia but not a word appears in it about the Bank. A consideration of this exhibit together with D38, P57 and D58 which I have already dealt with clearly shows that there is not an iota of substance in the turgid and pompous assertion by DW14 in examination-in-chief that there was clear notice to the whole world that the fight was a Bank show, as he put it.

The 2nd accused also denied the evidence given by the prosecution witnesses about the questions raised and answers given by him at the Board meetings on 29th August and 5th November, 1975. He agreed there was no personal animosity between PW19 and himself but said there was some as far as PW17 was concerned, but PW17 on being recalled for further cross-examination on this denied that there was any or any reason therefor. The 2nd accused in relation to the Board meeting on 5th November said that PW22 only asked him a question after that meeting was over as to whether Tinju Dunia had made a profit or not and that he replied he did not know as yet because he did not have the final figures. He however agreed that he considers PW22 as his friend but that nevertheless the evidence of this witness was not true, and was not able to say why he had testified as he did with regard thereto. I have carefully considered the 2nd accused's explanation in denial but do not find it reasonable in all the circumstances of this case and more particularly because, as I have already indicated, a disclosure by him and the other two accused or any one of them was certainly called for at least at that stage to the Board or the Executive Committee. Both the 1st and 2nd accused said they did not mention either P12 or Tinju Dunia at these two Board meetings because the accounts were not finalised and although they were apprehensive of a loss they did not know the magnitude of the loss and also believed the overseas collections could be large. Again, I am unable to accept the reasons given as any reasonable explanation in the circumstances for not informing the Board.

The 2nd accused said that the Minutes of the Board meetings on 29th August and 5th November are complete and correct in every detail, obviously referring to the fact that the questions and answers said to have been raised and given are not recorded therein but he also agreed under cross-examination that not every question asked and answer given is recorded in the minutes and that what was to be recorded was entirely within the discretion of the 3rd accused as Secretary subject to corrections at the subsequent meeting by any member when the minutes come up for confirmation or by him when the draft minutes were sent to him for approval. There is also the evidence of the 3rd accused that it was in his discretion as to what should and would appear in the minutes as finally recorded subject to correction by the 2nd accused as the draft minutes would usually be shown to him.

And the 3rd accused in his evidence has in fact admitted that there have been mistakes in the minutes. For instance, in relation to the Minutes of the Board meeting on 26th March, 1975, in connection with the setting up of the Investment and Loan Committee, the 3rd accused said that that Committee also has power to deal with investments, but agreed that the Minutes do not say so and went on to add that this was probably his fault for not putting this in very clearly, to use his own words, and it was his omission that has resulted in no reference in those Minutes to the matter of investment. These Minutes were however subsequently confirmed as they stand without any query or request for amendment by any one. The 3rd accused also said that at the Board meeting on 22nd March, 1976, he presented a paper to the Board containing information pertaining to and the unaudited accounts of Tinju Dunia but agreed that this is not mentioned in the Minutes of that Board meeting.

The 2nd accused in giving evidence said that the Minutes of the Board meeting on 27th November, 1973, were incorrect in stating that the proceeds of sale of investments were to be treated as income. These Minutes were confirmed without any amendments at the subsequent Board meeting on 30th January, 1974. Again, in dealing with the proceedings of the Executive Committee at its meeting on 27th November, 1975, the 2nd accused attributed some remarks to the 1st accused in the course of a discussion on Tun Razak's complaints regarding the Bank's activities but again both he and the 1st accused said that this does not appear in the Minutes.

It is therefore clear that the fact that the questions and answers in connection with Tinju Dunia do not appear in the Minutes of the Board meetings on 29th August and 5th November, 1975, does not necessarily detract from the evidence of the witnesses in respect thereof, and this is substantiated by the evidence of the 2nd and 3rd accused with regard to the preparation and composition of the minutes generally.

It transpired in the course of the cross-examination of the 2nd accused that whilst officiating as Managing Director of the Bank he has also carried on his own private businesses in respect of which there would appear to be some conflict of interest with his position in the Bank. He was a shareholder in Aman Properties Sendirian Berhad which was acquired by Rakyat Corporation of which he was the Managing Director and as a result the shareholders of Aman Properties obtained a profit of about $1.2 million out of which he personally made a clean profit of some $200,000 which apparently was never disclosed to the Bank. There was a payment by Rakyat Corporation of some $3.75 million odd for the acquisition of Aman Properties and the 2nd accused said that Rakyat Corporation obtained this amount from the Bank without the approval of the Board or the Executive Committee of the Bank and that this sum passed from the Bank to

Rakyat Corporation purely on his own authority. He justified this statement by saying that he thought he had sufficient authority to authorise this payment of $3.75 million, which he said appears in the Bank's accounts as an advance to subsidiaries, without the approval of the Board or the Executive Committee of the Bank. He said that this payment of $3.75 million was an investment and not a loan, and then added, in an attempt no doubt to explain the entry in the Bank's accounts as an advance, that it could be called an investment from the long term point of view and an advance from the short term point of view. He went on to say that it was true that he saw this as an opportunity to make money, and he did so, and that was the purpose of going into business.

I might also mention in connection with the 2nd accused's view of his authority and powers, that in the matter of the investment principle and policy of the Bank which I have already referred to, he agreed that there have been instances where investments made by the Bank exceeded the limits set out in the investment principle and plan laid down by the Executive Committee but which he referred to as guidelines, and it is significant that the 1st accused also said these were guide-lines only, although as I have already pointed out this was in fact, according to the Minutes, a clear principle and policy first discussed by the Board and then laid down by the Executive Committee at its meeting on 7th April, 1972. The 2nd accused in an attitude of calculated defiance ill-becoming a servant of the Bank boldly proclaimed in cross-examination that he considered he had the power to disregard this principle and policy laid down by the Executive Committee. He said that all such cases where the investment principle and policy laid down was not observed were brought before the Board or the Executive Committee for decision, confirmation or ratification, but he did not draw the attention of the Board or the Executive Committee to the limits laid down in the investment principle and plan formulated by the Executive Committee. His explanation was that he expected the directors to know this decision, and if there was any breach, they could have raised the matter. He did not consider it his duty to draw the attention of the directors to the principle and policy formulated, and when asked in cross-examination as to the position of those directors subsequently appointed or elected who were not directors or members of the Executive Committee in 1972, he replied that he expected the new directors or members of the Executive Committee to read the minutes of all previous Board and Executive Committee meetings to acquaint themselves with the Bank's previous decisions, problems and activities, adding quite bluntly that this was not his responsibility and that he expected them to go through those minutes when they were appointed. He agreed that such previous minutes were not provided to the new directors but added these were accessible to them.

The 2nd accused admitted, on being referred to the last paragraph in P12 for the period of the pledge, that his intention and that of the other two accused was that the pledging of the shares and stock was to be for a period of three months only, and that the pledging was done to raise the initial capital for the fight. He said that the longest period expected was three months from the date of P12 and that Tinju Dunia expected to receive revenue from the venture as soon as the fight was over and to pay back whatever facilities FNCB had given to it and to redeem the security pledged. If this expectation and hope had been realised it might well have been that the transaction effected by P12 would never have seen the light of day as far as the Bank was concerned, and in view of the evidence in connection with the position of Tinju Dunia which I have already dealt with, there would have been no certainty that the accused would still maintain that Tinju Dunia has any connection with the Bank. The 2nd accused again agreed later in further cross-examination that he pledged the shares and stock belonging to the Bank 5th May, 1975, in the hope that he would be able to redeem them with the expected profits of Tinju Dunia within the prescribed time limit of three months stated in P12, adding that the fight was a business venture and the object was to make money. His hope was, of course, unrealised in the circumstances and the security could not therefore be redeemed, with as a consequence the resultant exposure and revelation of the transaction in question in this case.

The 2nd accused also gave evidence of a demand for repayment received from FNCB and said that he could not remember whether he consulted the 1st accused on this or discussed the demand for repayment with the 3rd accused but added that it would be normal for him to have discussed it with the 3rd accused. I have already dealt with the documentary evidence in the matter of the payment vouchers, debit note and debit advice appearing in D24 and D25 in connection with the repayment sometime in October, 1975, of some $6 million of the Bank's moneys to FNCB through United Manufacturers. He agreed that the payment voucher No. 00480/75 dated 11th October, 1975, in D25 states the purpose of this payment as "Advance for working capital", and sought to explain this, somewhat fatuously in my view, by saying that it was normal for advances made by the Bank to its subsidiaries for whatever purpose to be so described. This appears to be a strange depiction as the sum in question had nothing to do with United Manufacturers or its operations as such, and this matter clearly affects the question of his intention. This voucher was also signed by the 2nd accused in the place where the 3rd accused as General Manager should have signed. The 2nd accused agreed that this payment of $6 million by the Bank to United Manufacturers was made on his own authority and without the approval, prior or subsequent, of the Board, the Executive Committee or the Investment and Loan Committee, and the purpose was to pay the amount outstanding in Tinju Dunia's account with FNCB in order to effect the return of the shares and stock of the Bank which had been pledged with FNCB.

I cannot accept his explanation as to why the repayment was made through United Manufacturers and not either directly by the Bank or through Rakyat Corporation if indeed Tinju Dunia is a subsidiary of that company. The nub of his explanation was that this was done as 'a matter of convenience' on the basis that he was about to go on leave abroad, previous payments had been made by the Bank through United Manufacturers which had already opened an account in its books in the name of Tinju Dunia and further-

more PW12 had knowledge of the position of Tinju Dunia's account with FNCB. I cannot see any difficulty whatsoever in having a folio opened in the ledger of Rakyat Corporation, the alleged parent company, for this purpose and the explanation given by the 2nd accused can hardly withstand the test of reason and common sense to be considered reasonable, particularly if the evidence of PW29 is taken into consideration when he said that Rakyat Corporation had in fact billed Tinju Dunia for over $40,000/- for work done and services rendered, expecting to receive payment in cash therefor.

The 2nd accused agreed that the payment of the $6 million through United Manufacturers was not brought before the Board of United Manufacturers. On being asked why then Tinju Dunia was not made a subsidiary of United Manufacturers, his explanation that this was because United Manufacturers has an outsider, namely, the Pahang State Development Corporation, as a shareholder of some five per cent of the equity and therefore United Manufacturers is not a wholly-owned subsidiary of the Bank, is again not reasonable as this could equally suggest that there was some apprehension in disclosing to outsiders the affairs of Tinju Dunia or the means resorted to for having recourse to the Bank's assets and funds. He said that the payment of $6 million through United Manufacturers was made because it was a payment by the Bank for a sub-subsidiary of the Bank, but I would point out that it was then in fact made to and through the wrong subsidiary in view of the contention of the defence that Rakyat Corporation is the parent company of Tinju Dunia. The 2nd accused agreed, however, that the $6 million could have been paid direct by the Bank to FNCB and I can see no reason why this was not done if indeed the whole transaction was open, untainted and honest.

The 2nd accused also testified regarding a briefing he gave to Tun Razak on the activities of the Bank which he said was on 30th October, 1975, although the date as minuted in the Minutes of the Executive Committee meeting on 27th November, 1975, is 28th October. For the purpose of that briefing he prepared some charts but agreed that he did not mention Tinju Dunia nor did it appear in any of the charts to show its connection with the Bank. When he reported this briefing to Tun Razak and the latter's complaints about the Bank's activities to the Executive Committee at its meeting on 27th November, 1975, he did not mention Tinju Dunia or its involvement with the Bank nor the payment of $6 million made to FNCB through United Manufacturers on 11th October, 1975. I have already mentioned that I would have thought this the most appropriate occasion to do so in view of the nature of the complaints made by Tun Razak.

The 2nd accused also agreed the Board should have been informed of the decision made by him and the 1st accused to invest the Bank's funds in the fight, but went on to say he did not agree that ratification by the Board was necessary. I should perhaps on this aspect refer immediately to the evidence of the 3rd accused when he said that it was the practice for the recommendations and decisions of all committees and sub-committees to be brought to the Board and the Executive Committee as the case may be. He agreed that the decision or resolution of the Investment Committee appearing in P12 was never submitted to the Board and that this was contrary to the accepted practice of the Bank, and that this was wrong. He added it did not occur to him to suggest to the 1st and 2nd accused that the resolution in P12 should be brought before the Board. I would have thought that it was his duty or at least to be expected of him as General Manager and Secretary to suggest to one or both the other two accused to that effect if it had not been done, and his omission would appear to point to his knowledge of the unlawful nature of the transaction as well as connivance on his part. When the proposal for the reorganisation of the Bank's subsidiaries and set-up generally and the formation of a holding company was discussed at the Board meetings on 29th August and 5th November, 1975, the 2nd accused did not mention Tinju Dunia because, as he said, he felt there was no necessity to do so.

The 2nd accused also admitted that the Registrar of Co-operative Societies did not know of the investment or application of the Bank's funds for the purposes of staging the fight either and that such use of the Bank's funds was an investment which may come under section 33(e) of the Ordinance requiring the approval of the Registrar. He confirmed that there has been no approval by the Registrar for the pledging of the shares and stock or the repayment of the sum of $6 million to FNCB. For the issue of the Letters of Credit on 5th May he agreed that the Bank could have used its moneys for that purpose and that the Bank had sufficient liquid funds on that day in its head office but said that this would not have been the best method as it would have meant that the Bank would not then have been able to deploy that amount usefully in its other business activities. I consider this explanation as nothing more than an elusive manoeuvre in sophistry. The 2nd accused added that in view of the urgency for the opening of the Letters of Credit on 5th May, he did not consider the By-laws and section 33(e) of the Ordinance as he felt there was no need to.

The 2nd accused also said that the signature of the 3rd accused on P12 was a formality and that if he asked the 3rd accused to sign a document which had something to do with the business of the Bank then the 3rd accused would sign it if he agreed. This suggests that the 3rd accused does in fact exercise his own independent judgment in the matter of appending his signature to any document he is asked to execute.

The 2nd accused said in evidence that he remembered a share certificate was issued by Tinju Dunia to Rakyat Corporation, but PW23, the Secretary of Tinju Dunia, had said in his evidence, as I have already pointed out, that up to the time he resigned as Secretary in March, 1976, no other shares had been issued by Tinju Dunia apart from the two subscribers' shares. The 2nd accused however agreed that any such share certificate issued to Rakyat Corporation would bear the signature of the Secretary of Tinju Dunia and, in answer to me, said that the Secretary (PW23) was responsible for the issue of share certificates and that he (the 2nd accused) would expect him to know if share certificates were issued.

On being referred to the reversal entry in D26(B1) which cancelled out the original entry of $9,998 in

respect of the issued and paid-up capital of Tinju Dunia, the 2nd accused said that this reversal entry was not correct and the original entry should stand as it was, making up the issued and paid-up capital as $10,000 and that this reversal entry was made under the supervision of PW29 who is in charge of the accounting records of Tinju Dunia. But again as I have pointed out PW29 said quite clearly in his evidence that this reversal entry was made on the instructions of the directors of Tinju Dunia, including the 2nd accused.

The 2nd accused said in re-examination that when he signed P12 he signed it both as Managing Director of the Bank and also as a member of the Investment and Loan Committee of 1975. He did indeed sign it with his designation as Managing Director underneath his signature but quite clearly he was signing that document as a resolution of that or whatever Committee it was and as a member of it. If he signed it as the Managing Director of the Bank then the signatures of the 1st and 3rd accused would have been unnecessary and the heading and substance of P12 would belie his assertion. He also agreed that it was possible that the three signatures at the bottom of P12 would suggest that the three signatories comprised the Investment Committee referred to in the heading.

I have already referred to his use of the words 'joint effort' in relation to the connection between the Bank and UMNO Youth in Tinju Dunia, carefully avoiding any reference to a joint venture, and it is in this context that I must view his evidence that assuming Tinju Dunia had made a profit, the whole profit would go to Rakyat Corporation and ultimately to the Bank. What then would be the position of UMNO Youth who were hoping to obtain some of the profits for their sports complex as PW5 and some of the defence witnesses had testified? What then would the position be if there was a loss? What then would be the purpose and effect of all this talk of a joint effort or joint venture or whatever? I have already referred to the evidence of the 1st accused that the Bank would have to suffer all the loss and that the loss in this venture by Tinju Dunia is in fact a loss by the Bank. The suggestion by the 1st accused would seem to be that as far as UMNO Youth is concerned in relation to the Bank this was a 'heads I win, tails you lose' affair but the 2nd accused seems to say quite the opposite.

All the witnesses were agreed that the division of the profits, if any, from the fight between UMNO Youth and the Bank was never determined or fixed but the 1st accused said under cross-examination by counsel for the 2nd accused that he was the leader of UMNO Youth and also Chairman of the Bank, and it would be left to the discretion of the Bank to determine UMNO Youth's share subject to what he could say as UMNO Youth leader in the matter. This was rather vaguely put but would appear to suggest that the division between the two entities would be left in effect to him to decide in his dual capacity, but he went on to add that whatever he said would be in the nature of advice which the Bank would not be bound to accept, although he had earlier said in effect that he expected virtually automatic ratification of his decisions by the Board without question.

It is also pertinent that unlike the cases of other subsidiaries and sub-subsidiaries of the Bank when their formation or acquisition and other activities and the Bank's involvement therein were subsequently reported to the Board or the Executive Committee, the matter of the formation of Tinju Dunia was never brought before the Board or the Executive Committee. I must however mention one exception and that is Aman Properties which was merely mentioned at the Board meeting on 26th March, 1975, as a subsidiary of Rakyat Corporation but the investment by the Bank of some $3.75 million in it was never disclosed to the Board or the Executive Committee, perhaps understandably because according to the evidence of the 2nd accused he personally profited in that transaction to the extent of some $200,000 and any disclosure of the Bank's substantial investment might well have unravelled and exposed the element of his personal interest and the benefit he received. It is certainly therefore not unreasonable to infer from this failure with regard to Tinju Dunia that it is not nor was it intended to be a joint venture or subsidiary involving the Bank or any of its subsidiaries.

Proceeding now to the evidence of the 3rd accused, I must immediately say that whatever sympathy I may have had for him dissipated with the manner in which he gave his evidence. He too was transcribing when the other two accused were in the witness box and appeared to be well-prepared when it came to his turn to testify. He spoke sometimes in a somewhat mechanical manner like a well-oiled machine and I had occasion at one stage to observe that he appeared to me to be reciting from a prepared text. He was able to refer to the prosecution witnesses flawlessly by the numbers they were designated with for the purposes of these proceedings. Although he said that he signed P12 as an obedient servant, referring no doubt to his response to the 2nd accused's request to do so, he was not beyond indulging in sophistry and manifested some intransigence in attempting to justify the validity and legality of P12 by a devious line of logic although, as he said, he signed it because he was asked to do so by the 2nd accused and after being satisfied that it was in order. I have already pointed out that he was careful in co-ordinating his choice of words with the 2nd accused in referring not to a joint venture as the 1st accused and the witnesses called on his behalf did but to a joint effort between the Bank and UMNO Youth to stage the fight. In his evidence he said that he heard 'that the Bank was putting a joint effort with UMNO Youth to stage the big fight', whatever that is supposed to mean. The attitude of the 3rd accused in the witness box would seem to support the statement made by his counsel that in his defence, as counsel put it, the 3rd accused is hanging on to the 2nd accused, and I would observe perhaps quite rightly so in all the circumstances.

The 3rd accused said that when the 2nd accused showed him P12 on 5th May, 1975, the latter explained to him that he and the 1st accused had a meeting as members of the Investment Committee of 1975 and they had resolved as in P12. What was the necessity to mention the year of the Committee when the 2nd accused in examination-in-chief had said that at the time he prepared P12 he had completely forgotten the existence of the 1972 Investment Committee? The 3rd

accused said that in signing P12 he was signing a resolution as an extract and then added that he was signing an extract of the minutes of a meeting in the form of a resolution as Secretary but not as a party to the making of the resolution. Now, in the course of making some observations during this trial I referred to and introduced the expression 'extract of minutes' and this seems to have been conveniently adopted by this accused. He said that looking now at P12 the heading should read "Extract of Minutes of Investment and Loan Committee of the Bank".

It is clear from the evidence that if indeed the 1st and 2nd accused did meet on 5th May as the Investment Committee or Investment and Loan Committee, there were no minutes of any such meeting. How then could there be an extract of minutes which do not exist? Under cross-examination the 3rd accused said he thought and regarded P12 when he signed it as an extract of the minutes but it does not appear that he ever enquired as to who had in fact taken down the minutes, if any, and he did in fact say in cross-examination that he did not ask for the full minutes. But in the course of his examination-in-chief he had said earlier that reading P12 it would appear he was signing a resolution and not an extract of minutes. But again in cross-examination he said that he accepted P12 as an extract of the minutes and that that occurred to him at the time he signed it. All this would appear to suggest that he signed P12 without considering its consequences and its propriety and merely on the *ipse dixit* of the 2nd accused.

It is interesting to note that the 3rd accused disagreed with the 2nd accused and was more wary when he said that P12 did not necessarily give the impression that the three signatories therein comprised the Investment Committee of the Bank and sought to explain this on the basis that below the names of the signatories their designations given relate to the Bank and not to the Investment Committee. I need hardly say that the principal officers of the Bank would only have a standing in respect of a committee of the Bank by virtue of the office they hold in the Bank and not the other way round, and reading P12 as such, the 3rd accused's statement has an extremely hollow ring about it.

He gave evidence as to how the minutes of meetings were prepared and briefly what he said was that for the purposes of his notes he would take down everything including questions and answers, all of them, unless it was a matter completely unconnected with the Bank, and he would then in his discretion later consider and decide what was important and what should be included in the final draft of the minutes. He agreed that if a question was asked and an answer given at a meeting and this does not appear in the minutes, this would not mean that the question was not asked or the answer given. I have already referred to the evidence on this by the 2nd accused who also agreed under cross-examination that not every question asked and answer given is recorded in the minutes and that what was to be recorded was entirely within the discretion of the 3rd accused as Secretary subject to corrections at the subsequent meeting by any director when the minutes come up for confirmation, and that when the 3rd accused submitted the draft minutes to him for approval he had the authority to make corrections.

The 3rd accused under cross-examination by counsel for the 2nd accused confirmed in answer to a question put to him that the Minutes of the Board meetings on 29th August and 5th November, 1975, are complete and correct in every detail, but then resiled and admitted in cross-examination on behalf of the Public Prosecutor that these Minutes were not complete in that they do not contain all the questions asked and answers given which he had noted in his notes, adding that it was not required under normal practice to include all questions raised and the replies thereto. This may well account for the fact that the questions and answers at the Board meetings on 29th August and 5th November as to which evidence was given do not appear in the Minutes of those two meetings which were moreover prepared by him.

The 3rd accused said that on 5th May, 1975, when he signed P12 he too had forgotten about the Investment Committee of 1972 but he was aware of the powers of the Investment and Loan Committee of 1975 and its composition and that the powers of that Committee had not been extended since its inception. He said he knew the purpose of P12 at that time and signed it as a formality as required to achieve its purpose. I would pause to observe here that in cross-examination he agreed that the Bank cannot make an investment of funds without the approval of the Registrar of Co-operative Societies as this is what the Ordinance says but in re-examination he launched into a tortuous exercise in casuistry in an attempt to justify the validity and legality of P12 and said that he did not consider the pledging of the shares and stock as an investment of funds because they were assets but not funds and the act of pledging in itself was only a guarantee but it would be a means of investment but not an actual investment and he concluded therefore that pledging was a step towards investment. He pertinaciously persevered in this exercise when in answer to me he said that there could be investment of other than funds and that the Bank could take equity in a joint venture company which was investment by using its assets such as land or machinery or buildings for the purchase of the shares instead of making payment in cash, but then agreed that it was not normally done to invest by means of shares and stock.

Again, in answer to me, the 3rd accused continued in his attempt to justify P12 by stating that he thought that the Investment and Loan Committee of 1975 has the power to resolve as in P12, and explained this on the lines that this Committee apart from giving loans is also an Investment Committee and has the power to deal with investments although the Minutes of the Board meeting on 26th March, 1975, do not say so because of his fault and omission in not putting this in the Minutes, and he went on to say that he considered pledging as a means or a step to investment and therefore by implication this Committee has the power to do all things necessary relating to investment. Whatever the merits of this argument, and I find none, it certainly appears to be no more than an endeavour from hindsight to justify the transaction effected by P12, and I would think this line of rhetorical reasoning

did not occur to him even in his imagination, let alone his thoughts, at the time he signed it.

I am of the view, however, that he clearly knew on 5th May, 1975, when he signed P12 that the powers of the 1975 Committee are in fact limited to the granting of loans only as recorded in the Minutes and that his evidence I have just related is no more than an *ex post facto* attempt at justification which is wholly devoid of substance or merit and is not without significance in relation to his intention at the material time.

He maintained that when he signed P12 he was aware of the powers, functions and duties of the Investment and Loan Committee of 1975 and that it has also the power to invest in any sum exceeding $100,000 and that it was his fault and omission for not stating so in the Minutes. But the draft of these Minutes was approved by the 2nd accused and there was no amendment or correction made or requested by the 2nd accused and indeed by the 1st and 3rd accused or any other member of the Board for that matter when the Minutes of the Board meeting on 26th March, 1975, which established this Committee were approved and confirmed at the subsequent Board meeting on 29th August, 1975. It is also of some consequence that the first purported exercise of its powers by reason of P12 by this 1975 Committee, on the evidence of the three accused, was not brought to the attention of the Board at this subsequent meeting of the Board on 29th August when the Minutes of the earlier meeting which had only just then established this Committee were brought up for confirmation.

He said he did not ask the 2nd accused when he was asked to sign P12 if the other members of the Committee had been informed of the meeting that morning. I do not therefore understand how he could then say that he signed P12 after having satisfied himself as to the correctness and propriety of the document. He agreed that the Bank cannot, according to the Ordinance, make an investment of its funds without the approval of the Registrar of Co-operative Societies but he went on to add, again in an attempt at justification, that he did not consider the pledging of the shares and stock in P12 as an investment of funds, taking the same line on this as the 2nd accused. He said that when he signed the Power of Attorney (P15) he understood what he was signing and also the purpose and effect of that document and that he signed it as complementary to P12. I have already adverted to the matter of the representations contained in P15 in considering the case for the prosecution.

The 3rd accused in cross-examination agreed that in giving a statement of the police on 26th January, 1976, he was asked whether Tinju Dunia is a subsidiary of the Bank and he thought his answer was that Tinju Dunia is a subsidiary of United Manufacturers, because he was informed by the 2nd accused sometime in late April, 1975, that a company would be set up to undertake the fight and it was to be a subsidiary of United Manufacturers and subsequently he was informed that Tinju Dunia had been formed for that purpose, and he added that he only came to know Tinju Dunia is a subsidiary of Rakyat Corporation sometime in February, 1976. It is astonishing, to say the least, that the 3rd accused, as General Manager and Secretary and on the evidence of the 2nd accused next in position to him in the hierarchy of control of the administration of the Bank, was left in this state of total ignorance as to the true position of Tinju Dunia before and at the time he signed P12 and long after that as well, and this must necessarily speak volumes for any relationship Tinju Dunia is supposed to have with the Bank.

He could not remember if he asked the 2nd accused whether the question of the formation of Tinju Dunia should be included in the agenda for the Board meeting on 29th August, 1975. He said that he considered the failure to report the decision of the Investment Committee appearing in P12 to the Board at its meetings on 29th August and 5th November, 1975, not as an omission on the part of the 2nd accused but only a deferment of reporting, as he put it. Here again I would consider this an attempt by the 3rd accused to go out of his way to try to explain something which according to the general tenor of his evidence was not his concern, because he did say later in cross-examination that both the 1st and 2nd accused were present at those two Board meetings and they knew much more about Tinju Dunia and all the necessary arrangements made and he would not consider it proper for him to bring the issue before the Board as he had very little knowledge of the matter. How would he know that the non-disclosure by the 2nd accused at these two Board meetings was only a deferment of reporting if he had not discussed it with him? There is no evidence that he did in fact so discuss.

His attempts to justify his action or rather the lack of it in response to the request for a Board meeting by PW20 were not very convincing, particularly in view of his assertion that he did not consider the request by PW20 serious enough to necessitate the calling of a Board meeting immediately. I do not think it an unreasonable inference in the circumstances to say that he was obviously waiting for the 1st and 2nd accused to return from their trips overseas and would rather leave the matter to them to deal with as the whole matter of the pledging originated from them and if he had taken the initiative to call a Board meeting he might well as a party to the transaction of pledging the shares and stock have had to bear the brunt of things.

He agreed that at the emergency Board meeting on 12th March, 1976, he did not inform the Board of the existence of P12 and that he was a party thereto, and explained this by saying that the 1st accused had already mentioned the two charges against both of them to the Board which in themselves were self-explanatory. But a scrutiny of the Minutes of that meeting (in P7) will show that nothing was mentioned at all about P12 and how it came about and the method by which the pledging of the shares and stock was in fact effected. References by the 1st accused to the gist of the charges would certainly not have made the members of the Board any the wiser with regard to P12. I have already touched on the conduct of the 3rd accused at this meeting in response to the query by PW20.

The 3rd accused said under cross-examination

that not all appointments of officers of the Bank to the Board of subsidiary companies of the Bank were subsequently approved or ratified by the Board of the Bank and gave as an instance the appointment of the directors in Shahaz Sendirian Berhad which he said was never approved or ratified by the Board, but on being reminded he agreed that it was correct that the acquisition itself of Shahaz was never in fact referred to the Board and that he could not think of the case of any other subsidiary to substantiate his statement that not all such appointments were subsequently approved or ratified by the Board of the Bank. This evidence of course relates to the presence of officers of the Bank on the Board of Tinju Dunia which was never reported to nor approved by the Board. He agreed that the appointment of directors of sub-subsidiaries was a matter for the subsidiary company concerned, and of course in relation to Tinju Dunia, this was, on the contention of the accused, Rakyat Corporation.

The 3rd accused declared in cross-examination that he would not hesitate to do all that he was asked to do to make the fight a success as long as it was in order and that he was anxious to see the fight a success, because, as he put it, the Bank was involved in it, in the same way as with all other projects of the Bank.

It would appear to me on a consideration of the evidence adduced for the defence that the 1st and 2nd accused were attracted by the possibility of huge profits accruing from the fight and used the Bank's assets in the hope and expectation that within three months from the time P12 was made they would be able to receive the income from the fight and from that redeem the shares and stock pledged as security with FNCB for the purposes of Tinju Dunia's requirements. I have referred to the evidence of the 2nd accused which clearly substantiates this conclusion.

For the purposes of section 468 of the Penal Code, P12 must have been intended to be used for the purpose of cheating, and in regard to this there is the evidence of PW13 and PW14 who said that P12 was the most important item in the documentation required by FNCB and that without it the security lodged would not have been accepted, and I would refer to the material aspects of their evidence which I have already discussed in dealing with the case for the prosecution. PW14 clearly said that if she had known that the 2nd accused had not obtained the consent of the Board of the Bank in the matter of the pledging of the shares and stock she would not have accepted them as collateral security in respect of the applications made for the Letters of Credit. All the three accused admitted under cross-examination that they knew the purpose and the contents of P12 and signed it. And there is therefore sufficient evidence to show an intention to use P12 for the purpose of cheating by dishonestly inducing FNCB to issue the Letters of Credit on behalf of Tinju Dunia on the security of the shares and stock.

It is also clear from the evidence that whatever the nature of the transaction in the matter of the pledging of the shares and stock or however it was effected, the approval of the Registrar of Co-operative Societies was a necessary prerequisite under the only provision of the Ordinance that would or could be applicable, namely, section 33(e), or at any rate in the event of a doubt as to its pertinence. The Rules and By-laws are servient to the Ordinance. Therefore what was done was clearly contrary to law and effected by unlawful means which is pivotal for the purposes of sections 23 and 24 of the Penal Code. The position of Tinju Dunia within the Bank complex has, of course, a crucial bearing on this aspect and I have already dealt with this in some detail and would only add that the fact that the 1st and 2nd accused decided that Tinju Dunia should be a joint venture between UMNO Youth and the Bank could not *ipso facto* make Tinju Dunia a subsidiary of the Bank in the light of all the evidence adduced. The appointment of the Bank's officers to the Board of Tinju Dunia was a unilateral act of the 2nd accused unsanctioned and unauthorised by the Board of the Bank or of any of its subsidiaries. The evidence for the defence discloses that the matters to be brought before the Board or the Executive Committee were at the discretion of the 2nd accused and if he chose not to bring any particular matter before the Board or the Executive Committee, the members of those two bodies would remain in ignorance.

A consideration of the evidence in this case would suggest that the failure to bring the matter of Tinju Dunia before the Board or the Executive Committee of the Bank was deliberate in view of all the circumstances I have referred to. And not only that but there is the evidence of the denials by the 2nd accused at the Board meetings on 29th August and 5th November, 1975, and the lack of disclosure and indeed wilful concealment in the documentary exhibits I have adverted to. The reliance on the 1st accused's position of pre-eminence and that there would therefore be virtually automatic ratification of his acts is equally untenable as I have already said for then there would have been all the more reason for the matter of Tinju Dunia to have been reported to the Board with perhaps an intimation that the final accounts would be made known in due course.

I have already touched on the matter of the evidence as to where the profits, if any, would go and the loss would fall. If there were any profits after the discharge of the debt due to FNCB, the balance would be at the disposal of Tinju Dunia, and the 1st accused as Adviser and the 2nd accused as Chairman, Managing Director and a shareholder in Tinju Dunia would no doubt have the power and authority to determine its destination. In this event neither the Bank nor any of its subsidiaries would or could claim any lawful entitlement thereto in the absence of any legal and sustainable link with Tinju Dunia in view of all the circumstances I have considered. The effect of the evidence of the 1st accused on this would appear to be that the Bank really came into the picture only to underwrite a loss, if any, without any certainty as to its entitlement to any profit. It is significant in this connection that there is no evidence that at the UMNO Youth Executive Council meeting on 31st March, 1975, or at the General Hospital the matter of a share of the profits from the fight for the UMNO

Youth sports complex was ever discussed. Both the 1st and 2nd accused spoke of the apprehension of litigation and their desire not to expose the Bank to litigation as the reason for not involving the Bank directly but as the events have shown the use of the Bank's assets as security was certainly not an inconceivable source of the Bank's direct involvement in litigation in relation to its commitment to FNCB.

With regard to the meeting between the 1st and 2nd accused on 5th May, 1975, when the signed P12, the evidence for the defence suggests that this was an informal as opposed to a formal meeting. The point however is that P12 purports to be a formal resolution vitally necessary for the purposes of the transaction effected with FNCB on that day. The question that arises is whether an informal meeting can pass a formal resolution, and I have no doubt that the Credit Committee of FNCB which sanctioned the application for the Letters of Credit on the strength of P12 would have been horrified had they known that the resolution in P12 was an informal one or made at an informal meeting. It is clear from the evidence of the accused that no notice of any meeting for that day was sent to the members of the Investment Committee or the Investment and Loan Committee and this would suggest that the meeting between the 1st and 2nd accused was not a meeting of the relevant Committee as such nor that they were acting on behalf of that Committee but an arbitrary and unilateral conventicle between the two of them for the purposes of effecting the pledging of the shares and stock by means of P12 which was the *sine qua non* for that transaction.

One more matter which I should mention in considering the case for the defence is that the prosecution in its final submission raises the point that although it was easy for the 1st accused to seek to rely on what Tun Razak, who is unfortunately no longer able to testify and to contradict him, is alleged to have said regarding the use of the Bank's funds, it was strange that there were other witnesses material to the case and still able to but who were not called to give evidence by the defence, such as Dato Mohamed Rahmat, the then Deputy President of UMNO Youth and the author of D38 and a participant according to the evidence in some of the discussions including that at the General Hospital regarding the fight; the Secretary-General of UMNO Youth who DW10 said he had briefed with regard to the possibility of asking the assistance of the Bank to finance the fight; Dato' Abdullah bin Ayub, the Secretary-General of the Treasury and the other Treasury officials to whom the 2nd accused disclosed that the Bank was the financial source of Tinju Dunia; Mike Ong whose project papers (D64) were relied upon by the defence; the auditors who prepared the annual accounts of the Bank which were put in only for identification; and perhaps also PW4 who could have been recalled for further cross-examination on the allegation disclosed by the 1st accused after the case for the prosecution had closed that PW4 had told him that he gave evidence as he did in relation to P18(1) only as a result of being threatened with arrest if he did not do so.

No unfavourable inference can or will be drawn against the accused for not calling these or any other witnesses and I make no adverse inference or assumption whatsoever against them in this respect. I do not think however that I am necessarily precluded from commenting on or taking into consideration the failure to call a particular witness or witnesses in weighing the credibility of the evidence adduced by and for the defence and in viewing the whole of the material upon which I have to decide in order to determine whether the explanation of the accused has cast a reasonable doubt on the case for the prosecution. I must repeat however and make it abundantly clear that in a criminal case there is no obligation on the defence to call any witness and it is entirely open to the defence to adduce no evidence at all, and all that they need to do is to raise a reasonable doubt when called upon to enter on their defence, though the failure to call any particular witness may be a matter the court can take into account (without however drawing any adverse inference or making any assumption or presumption whatsoever against the defence in that regard), particularly as in this case the potential witnesses were persons in respect of whom the prosecution had probably no cogent means of knowing that they might have any relevant evidence to give until the accused themselves and their witnesses came to give evidence (*Regina* v. *Gallagher*;[17] *Public Prosecutor* v. *Lim Kuan Hock*;[18] *Tay Choo Wah* v. *Public Prosecutor*[19]).

I have already discussed and dealt with the other matters pointing to the intention of the accused at the relevant time, and, recapitulating briefly, the more salient of these are, *inter alia*, P12 itself; the position of Tinju Dunia in relation to the Bank; the payments made through United Manufacturers including the repayment of $6 million to FNCB; the non-disclosure to the Board or the Executive Committee at any of their meetings subsequent to 5th May, 1975, and also at the briefing given by the 2nd accused to Tun Razak at the National Operations Room on 30th October, 1975; the denials by the 2nd accused at the Board meetings on 29th August and 5th November, 1975; the report in P18(1); and the contents of D38, P57, D58 and D59.

I have already considered the conduct of the accused and would also in this respect refer to that of the 1st accused in his attempt to explain the position at the emergency Board meeting on 12th March, 1976, and of the 2nd accused in relation to his trip to Paris, London and Singapore and his belated return to Kuala Lumpur despite a cable he sent to the Attorney-General intimating that he would be returning to Kuala Lumpur on 17th March, 1976. I might also mention that counsel for the 3rd accused, acting presumably on instructions, put to the Investigating Officer (PW1) a question in cross-examination to the effect that as a result of the arrest of the 3rd accused the emergency Board meeting on 12th March, 1976, was called off but this proved to be untrue on the evidence of the 3rd accused himself. I have already dealt with his attitude and conduct otherwise.

4. *Conclusion and Verdict.*

I have considered with great care every aspect of the evidence adduced and the submissions made

on behalf of the three accused. It is not necessary for the defence to prove anything and all that is necessary for the accused to do is to give an explanation that is reasonable and throws a reasonable doubt on the case made out for the prosecution. It cannot be a fanciful or whimsical or imaginary doubt, and in considering the question as to whether a reasonable doubt has been raised, the evidence adduced by and the case for the defence must be viewed in at least some amount of light, not necessarily bright sunlight, but certainly not against the dark shadows of the night. I do not in all the circumstances find the explanation given by the three accused reasonable or as casting any reasonable doubt on the case for the prosecution if indeed according to their evidence there was nothing to conceal and everything was open. Having regard to the evidence as a whole, both oral and documentary, the explanation given by the three accused is not only unreasonable but also inconsistent with their innocence.

I find that in making P12 and in relation to the subsequent pledging of the shares and stock the three accused had intentionally caused by unlawful means wrongful loss to the Bank and wrongful gain to Tinju Dunia which is not a subsidiary nor a sub-subsidiary of the Bank. They knew they had no authority to do what they did and in doing so, on the evidence, they committed the offence of forgery under section 468 of the Penal Code, intending P12 to be used for the purpose of cheating FNCB. The 2nd accused in pledging the shares and stock committed criminal breach of trust within the definition thereof in section 405 of the Penal Code, and the 1st and 3rd accused in signing P12 did so conscious of and to achieve its purpose and therefore had actively abetted the 2nd accused in committing criminal breach of trust. I might mention the submission of counsel for the 3rd accused that if P12 is a forgery, then, as he puts it, automatically the criminal breach of trust charge is proved.

If a person proclaims his intention to launch a commendable venture with the assistance of some opulent organisation but implements that praiseworthy project by means of a fraud or felony against the organisation, his laudable motives cannot exonerate or excuse an otherwise criminal act. The matter before me would appear to be as clear a case as one can equate with dipping one's hands into another's till on a Friday afternoon for a week-end splurge with the expectation, unfortunately unrealised, of being able to restore or reimburse on the Monday morning.

The position in this case would seem to me to be not dissimilar in its legal implications and pattern of action to that in an authority not cited by either side — the decision of the Privy Council on appeal from Ceylon (as it was then known) in the case of *A.J.E.G. Caspersz* v. *The King*.[20] The appellant, Caspersz, an executive engineer in the Public Works Department, was in charge of the construction of a particular three-mile stretch of road. For military reasons the work was of great importance and speed was more important than cost. The overseers who were registered Government servants employed labourers who were paid at rates approved by the Government, and periodically the overseers prepared bills for work done by the labourers employed by them, and these were checked and if necessary corrected by the appellant. At the time of the work in question there was an acute and increasing shortage of labour, and the overseers were from the commencement grumbling that they were losing because, so they said, they were paying their labourers more than they were getting from the Public Works Department. Complaints were made to the appellant who procured the overseers to insert items in their bills for rubble bottom, although in fact no rubble bottoming was done, and most of the alterations to the relevant documents were made by the appellant.

In a charge in that case against the appellant for criminal breach of trust it was contended that he did not intend to cause wrongful gain to the overseers or wrongful loss to the Government, and that though the falsification of the bills and forms might be considered unlawful means within section 21 of the Penal Code (which corresponds to section 23 of our Code), yet the overseers were legally entitled within that section to be indemnified by the Government for the losses they had sustained in paying their workmen. It was further contended that the onus of proving that the appellant knew that the overseers were not legally entitled to the money paid to them by him rested upon the prosecution and that it had not been discharged and that the deception practised by the appellant was not sufficient to prove dishonesty since deception may honestly be employed to achieve lawful and desirable ends. Lord Oaksey in delivering the judgment of their Lordships of the Privy Council held that the unchallenged evidence showed that the appellant intended to cause wrongful gain to the overseers and wrongful loss to the Government within the meaning of the Penal Code. The means adopted by the appellant was undoubtedly unlawful and there was no evidence that the overseers were legally entitled to be indemnified by the Government for their alleged losses. The Privy Council further held that the fact that the appellant may have thought that he was acting in the interests of the country in getting the work done was no defence to the charge but could be properly taken into account only in imposing sentence.

Let me as a postlude add this. The pre-eminence of the 1st accused at the material time which has been raised and relied on by the defence and the confidence and faith of the directors of the Bank in the ability, wisdom, guidance and leadership of the 1st and 2nd accused can be no reason or excuse for them to transcend the law, for no one, but no one, is above the law, and I would repeat what I said in my judgment in *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia (No. 2)*[21] that ours is a system of law which no expediency can warp and no power can abuse with impunity.

In the event I find all the three accused guilty on the charges preferred against them.

Re Sentence:

(Addressing accused *ex tempore* before passing sentence): Before I pronounce sentence I have some general observations to make in the matter of the penalties involved.

The punishment for the charge of forgery under section 468 of the Penal Code is a term of imprisonment not exceeding seven years and also liability to a fine. A term of imprisonment is mandatory, and there is the additional liability to a fine.

For criminal breach of trust the penalty is a term of imprisonment which may extend to three years or a fine or both.

For the charge of abetment of criminal breach of trust against the 1st and 3rd accused under section 109 of the Penal Code, the punishment is the same as for the substantive offence.

I have to bear these statutory provisions in mind and have also to take into account the fact that the charge of criminal breach of trust, although a separate charge in law, is, as Mr. Jag-Jit Singh put it, the immediate result and consequence of the forgery charge.

(*Addressing 1st accused*) Datuk Haji Harun: I find this a sad and tragic moment to have a person of your standing before me for sentence. I cannot eschew knowledge of your standing as it is in evidence that you have been a political leader and have rendered service to the country as the Mentri Besar of Selangor and in several other capacities. All this I will have to take into consideration in your case. If a soldier stood before me to receive sentence I would have to take into consideration the service he has rendered to the country. Likewise, in your case I cannot efface consideration of the services you have in the past rendered. I also take into account the fact that as Chairman of Bank Rakyat you were in fact giving voluntary service in an honorary capacity, and that you drew no remuneration or allowance of any kind as Mr. Chelliah has put in cross-examination to several of the witnesses who testified. Your position is unlike that of the 2nd and 3rd accused who were paid employees of the Bank. The real punishment in your case in the light of the position you have hitherto held is in my view the fact that you have been charged with the offences in question and had to stand trial in this court for a period of some 59 days and have had convictions recorded against you on the two charges in question. That would appear to be the brunt of your punishment. So there is in fact in your case fairly good reason for mitigation in respect of sentence in the light of these circumstances. I accept the fact as borne out by the evidence that in this unfortunate affair you did not expect or receive any personal monetary benefit and that what you did was in fact to implement the decision by the UMNO Youth Executive Council to stage the Ali-Bugner fight which was a political decision, and that as the UMNO Youth leader at that time you felt obliged to implement that decision. It is unfortunate that the means resorted to for this implementation were unlawful and therefore brought it within the definition of dishonest intention in sections 23 and 24 of the Penal Code.

The offences on which you have been convicted are serious. The punishment under section 468 of the Penal Code is mandatory imprisonment and although it might be said that the circumstances in your case are such, and I accept the fact that there are such circumstances in your favour, as to call for the imposition of punishment less severe than would normally be called for, to think in terms of anything like one day's imprisonment would in the true sense of the word make an absolute farce of the law. I have to hold the balance between the various considerations that cross my mind and considering everything and taking into account the public interest and the circumstances of your case, I cannot but on the 1st charge under section 468 of the Penal Code in Criminal Trial No. 40 of 1976 sentence you to 6 months' imprisonment. I think this is the lowest possible sentence in the circumstances in view of the maximum that can be imposed under section 468. Under sections 109 and 406 of the Penal Code in Criminal Trial No. 41 of 1976, I fine you $15,000/-, in default 6 months' imprisonment.

(*Addressing 2nd accused*) Datuk Abu Mansor: In your case too I do not think a long term of imprisonment would serve very much purpose but the gravity of the offences must be reflected in the punishment I have to impose. It may well be, as Mr. Edgar Joseph has said, that as a result of your convictions in this case your career has been ruined. That however is a natural consequence of your own acts, and is of universal application to almost all convicted offenders.

The difference in your case from that of the 1st accused is that you were a paid employee of the Bank holding a very high position. The evidence has disclosed in fact that you sought to build an empire out of the Bank which in the circumstances has now come crumbling down about your ears. It would seem as the evidence has shown that you have sought to convert the executive chair you were occupying as Managing Director into a throne and by your act of stupidity that chair is today not even an executive chair.

Although all three of you have been convicted on the charges preferred, you were in fact the author of the transaction effected by P12. In the circumstances I have to impose a more severe sentence in your case and considering the maximum imposable under section 468, on that charge in Criminal Trial No. 40 of 1976 you are sentenced to two years' imprisonment. On the charge under section 406 of the Penal Code in Criminal Trial No. 43 of 1976 you are fined $25,000/-, in default 9 months' imprisonment.

(*Addressing 3rd accused*) Ismail bin Din: You have said, and counsel acting for you has repeated in his plea for mitigation, that you were acting as an obedient servant. I too am an obedient servant of the law and of justice and it is my duty to mete out and impose on you punishment commensurate with the circumstances. As I have said in my judgment earlier this morning your general attitude and the various circumstances have disclosed that P12 was not something that you signed blindly. I cannot accept for a moment that as General Manager and Secretary of the Bank you were unaware of the true position of Tinju Dunia. You too held a high position in the Bank and unlike the 1st accused were a paid employee of the Bank. Both you and the 2nd accused, as paid employees of the Bank, betrayed the trust placed in you as the two senior-most employees of the Bank.

In these circumstances, on the charge under section 468 of the Penal Code in Criminal Trial No. 40 of 1976 the sentence of this court is that you go

to prison for one year. On the charge under sections 109 and 406 of the Penal Code in Criminal Trial No. 41 of 1976 you are fined $15,000/-, in default 6 months' imprisonment.

Apart from the observations addressed to the three accused, I have also taken into account the following considerations:

(1) The sentence must bear relation to the particular circumstances of the offender as well as the particular circumstances of the offence.

(2) The Deputy Public Prosecutor who appeared before me to take judgment but did not appear in the trial itself and therefore perhaps did not know the facts and background of this case and the nature of the charges involved was under a total misconception when, in addressing me on sentence, he said that the Bank had incurred a loss of about $7.9 million, in so far as this pertains to the charges in this trial.

The shares and stock in question which are the subject-matter of the charges in the trial before me are still with FNCB and have not been disposed of, and according to the evidence of Richard Kent Bird (PW13), the then resident Vice-President of FNCB in Kuala Lumpur, the amount of credit facilities granted to Tinju Dunia on the security of the shares and stock have been reduced to only about $150,000/-. Only this amount therefore is outstanding for the purposes of redeeming the shares and stock from FNCB.

It is true that $6 million of the Bank's moneys was paid to FNCB through United Manufacturers in October, 1975, by way of repayment towards the amount due in respect of the credit facilities accorded to Tinju Dunia and I have dealt with this at pages 20 and 116 of my judgment, but this cash payment of $6 million by the Bank is in fact the subject-matter of another charge which is still pending trial. I could hardly therefore take into account this cash loss of $6 million in the circumstances. If there had in fact been in relation to the charges with which I was concerned in this trial a loss of $7.9 million or anything like it, then undoubtedly wholly different considerations would apply in the matter of sentence.

(3) The accused were all first offenders (the prosecution not having indicated otherwise) and persons of professional status and their careers would be ruined by the mere fact of conviction. And for the 1st accused, he has as a result forfeited the right to further participation in public life which has in fact been his career for the past several years. (*Laiq Singh* v. *State of U.P.*[22] at page 659 2nd column).

(4) I adopted and reflected the exposition of the classical principles of sentencing enunciated by Lawton L.J., in the Court of Appeal in England in *Sargeant* v. *Regina*[22] and particularly his observations (at pp. 76, 77) that the very fact that an accused has lost his career is of course a severe penalty for him, and that for men of good character the very fact that prison gates have closed is the main punishment and it does not necessarily follow that they should remain closed for a long time.

(5) The accused will no doubt be subjected to civil litigation by the Bank to recover the loss occasioned by the transaction in issue in this trial.

(6) The magnitude of the costs incurred in the defence in a trial of this length and nature.

(7) And in the case of the 1st accused, I somewhat equated his position with that of the appellant in the Privy Council case of *A.J.E.G. Caspersz* v. *The King*[20] which I have previously referred to, in that he was implementing a decision of the UMNO Youth Executive Council to stage the fight, that he received no personal benefit, that the evidence disclosed that one of the reasons for staging the fight was to project the image of Malaysia and that it did have the effect of enhancing the prestige of the country, and that the Privy Council said in that case that although certain circumstances would be no defence to a charge they could properly be taken into account in reducing the sentence.

Order accordingly.

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